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No. 46] NEW DELHI, NOVEMBER 6—NOVEMBER 12, 2011, SATURDAY/KARTIKA 15—KARTIKA 21, 1933

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक एवं प्रशिक्षण विभाग)
नई दिल्ली, 3 नवम्बर, 2011

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
(Department of Personnel and Training)
New Delhi, the 3rd November, 2011

का.आ. 3177.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मणिपुर राज्य सरकार, गृह विभाग, इम्फाल की अधिसूचना सं. 13/2(6)/09-एच(सीसी) दिनांक 7 जनवरी, 2010 द्वारा प्राप्त सहमति से सूचना प्रौद्योगिकी (संशोधन) अधिनियम, 2008 (2009 की अधिनियम संख्या 10) की धारा 65, 66, 66-ए, 66-बी, 66-सी, 66-डी, 66-ई, 66-एफ, 67, 67-ए, 67-बी, 67-सी, 84-बी, 84-सी एवं 85 के अंतर्गत दंडनीय अपराधों और उपर्युक्त अपराधों के संबंध में प्रयासों, दुष्प्रेरणों तथा षडयंत्रों तथा उस संव्यवहार के अनुक्रम में किए गए अपराध/अपराधों या उन्हीं तथ्यों से उद्भूत मामलों का अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार संपूर्ण मणिपुर राज्य के संबंध में करती है।

S.O. 3177.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Manipur, Home Department, Imphal vide Notification No. 13/2(6)/09-H(CC) dated 7th January, 2010, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State Manipur for investigation of offences punishable under sections 65, 66, 66-A, 66-B, 66-C, 66-D, 66-E, 66-F, 67, 67-A, 67-B, 67-C, 84-B, 84-C, and 85 of the Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[फा. सं. 224/1/2009-एवीडी-II]
राजीव जैन, अवर सचिव

[F.No. 224/1/2009-AVD-II]
RAJIV JAIN, Under Secy.

नई दिल्ली, 3 नवम्बर, 2011

का.आ. 3178.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तमिलनाडु राज्य सरकार की अधिसूचना सं. 97374/पीओएल. 12/2009 दिनांक 7 मई, 2010 द्वारा प्राप्त सहमति से सूचना प्रौद्योगिकी (संशोधन) अधिनियम, 2008 (2009 की अधिनियम संख्या 10) की धारा 65, 66, 66-ए, 66-बी, 66-सी, 66-डी, 66-ई, 66-एफ, 67, 67-ए, 67-बी, 67-सी, 84-बी, 84-सी एवं 85 के अंतर्गत दंडनीय अपराधों और उपर्युक्त अपराधों के संबंध में प्रयासों, दुष्प्रेरणों तथा षडयंत्रों तथा उस संव्यवहार के अनुक्रम में किए गए अपराध/अपराधों या उन्हीं तथ्यों से उद्भूत मामलों का अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार संपूर्ण तमिलनाडु राज्य के संबंध में करती है।

[फा. सं. 224/1/2009-एवीडी- II]

राजीव जैन, अवर सचिव

New Delhi, the 3rd November, 2011

S.O. 3178.— In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Tamil Nadu vide Notification No. 97374/Pol.12/2009 dated 7th May, 2010, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Tamil Nadu for investigation of offences punishable under Sections 65, 66, 66-A, 66-B, 66-C, 66-D, 66-E, 66-F, 67, 67-A, 67-B, 67-C, 84-B, 84-C, and 85 of the Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 224/1/2009-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 3 नवम्बर, 2011

का.आ. 3179.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए आन्ध्र प्रदेश राज्य सरकार, गृह (एससी.ए) विभाग, की अधिसूचना जी.आं. एमएस. सं. 38 दिनांक 22 फरवरी, 2010 द्वारा प्राप्त सहमति से सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 की अधिनियम संख्या 21) की धारा 65, 66, 66-ए, 66-बी, 66-सी, 66-डी, 66-ई, 66-एफ, 67, 67-ए, 67-बी, 67-सी, 84-बी,

84-सी एवं 85 के अंतर्गत दंडनीय अपराधों और उपर्युक्त अपराधों के संबंध में प्रयासों, दुष्प्रेरणों तथा षडयंत्रों तथा उस संव्यवहार के अनुक्रम में किए गए अपराध/अपराधों या उन्हीं तथ्यों से उद्भूत मामलों का अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार संपूर्ण आन्ध्र प्रदेश राज्य के संबंध में करती है।

[फा. सं. 224/1/2009-एवीडी- II]

राजीव जैन, अवर सचिव

New Delhi, the 3rd November, 2011

S.O. 3179.— In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Andhra Pradesh, Home (S.C.A) Department vide Notification G.O. Ms. No. 38 dated 22nd February, 2010, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Andhra Pradesh for investigation of offences punishable under Sections 65, 66, 66-A, 66-B, 66-C, 66-D, 66-E, 66-F, 67, 67-A, 67-B, 67-C, 84-B, 84-C, and 85 of the Information Technology Act, 2000 (Act No. 21 of 2000) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 224/1/2009-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 3 नवम्बर, 2011

का.आ. 3180.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मिज़ोरम राज्य सरकार, सतर्कता विभाग, आईजील की अधिसूचना सं. सी. 31018/1/10-वीआईजा दिनांक 6 अप्रैल, 2010 द्वारा प्राप्त सहमति से सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 की अधिनियम संख्या 21) की धारा 65, 66, 66-ए, 66-बी, 66-सी, 66-डी, 66-ई, 66-एफ, 67, 67-ए, 67-बी, 67-सी, 84-बी, 84-सी एवं 85 के अंतर्गत दंडनीय अपराधों और उपर्युक्त अपराधों के संबंध में प्रयासों, दुष्प्रेरणों तथा षडयंत्रों तथा उस संव्यवहार के अनुक्रम में किए गए अपराध/अपराधों या उन्हीं तथ्यों से उद्भूत मामलों का अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार संपूर्ण मिज़ोरम राज्य के संबंध में करती है।

[फा. सं. 224/1/2009-एवीडी- II]

राजीव जैन, अवर सचिव

New Delhi, the 3rd November, 2011

S.O. 3180.— In exercise of the powers conferred by the sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Mizoram, Vigilance Department, Aizawl vide Notification No. C. 31018/1/10-VIG dated 6th April, 2010, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Mizoram for investigation of offences punishable under Sections 65, 66, 66-A, 66-B, 66-C, 66-D, 66-E, 66-F, 67, 67-A, 67-B, 67-C, 84-B, 84-C, and 85 of the Information Technology Act, 2000 (Act No. 21 of 2000) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 224/1/2009-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 3 नवम्बर, 2011

क्र.आ. 3181.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हिमाचल प्रदेश राज्य सरकार, गृह विभाग की अधिसूचना सं. गृह (ए)एफ(1)-5/2008 भाग II दिनांक 10-11-2010 द्वारा प्राप्त सहमति से सूचना प्रौद्योगिकी (संशोधन) अधिनियम, 2008 (2008 की अधिनियम संख्या 10) की धारा 65, 66, 66-ए, 66-बी, 66-सी, 66-डी, 66-ई, 66-एफ, 67, 67-ए, 67-बी, 67-सी, 84-बी, 84-सी एवं 85 के अंतर्गत दंडनीय अपराधों और उपर्युक्त अपराधों के संबंध में प्रयासों, दुष्प्रेरणों तथा षडयंत्रों तथा उस संव्यवहार के अनुक्रम में किए गए अपराध/अपराधों या उन्हीं तथ्यों से उद्भूत मामलों का अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार संपूर्ण हिमाचल प्रदेश राज्य के संबंध में करती है।

[फा. सं. 224/1/2009-एवीडी- II]

राजीव जैन, अवर सचिव

New Delhi, the 3rd November, 2011

S.O. 3181.— In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Himachal Pradesh, Home Department vide Notification No. Home (A) F(1)-5/2008 Pt. II dated 10th November, 2010, hereby extends the powers and jurisdiction of the members of the Delhi Special Police

Establishment to the whole of the State of Himachal Pradesh for investigation of offences punishable under Sections 65, 66, 66-A, 66-B, 66-C, 66-D, 66-E, 66-F, 67, 67-A, 67-B, 67-C, 84-B, 84-C, and 85 of the Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 224/1/2009-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 3 नवम्बर, 2011

क्र.आ. 3182.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए सिक्किम राज्य सरकार, गृह विभाग, गंगटोक की अधिसूचना सं. 96/गृह/2010 दिनांक 9 सितम्बर, 2010 द्वारा प्राप्त सहमति से सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 की अधिनियम संख्या 21) की धारा 65, 66, 66-ए, 66-बी, 66-सी, 66-डी, 66-ई, 66-एफ, 67, 67-ए, 67-बी, 67-सी, 84-बी, 84-सी एवं 85 संशोधित सूचना प्रौद्योगिकी (संशोधन) अधिनियम, 2008 (2009 की अधिनियम संख्या 10) के अंतर्गत दंडनीय अपराधों और उपर्युक्त अपराधों के संबंध में प्रयासों, दुष्प्रेरणों तथा षडयंत्रों तथा उस संव्यवहार के अनुक्रम में किए गए अपराध/अपराधों या उन्हीं तथ्यों से उद्भूत मामलों का अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार संपूर्ण सिक्किम राज्य के संबंध में करती है।

[फा. सं. 224/1/2009-एवीडी- II]

राजीव जैन, अवर सचिव

New Delhi, the 3rd November, 2011

S.O. 3182.— In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Sikkim, Home Department, Gangtok vide Notification No. 96/Home/2010 dated 9th September, 2010, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Sikkim for investigation of offences punishable under Sections 65, 66, 66-A, 66-B, 66-C, 66-D, 66-E, 66-F, 67, 67-A, 67-B, 67-C, 84-B, 84-C, and 85 of the Information Technology Act, 2000 (Act No. 21 of 2000) as amended by Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences

committed in course of the same transaction or arising out of the same facts.

[F. No. 224/1/2009-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 3 नवम्बर, 2011

का.आ. 3183.—केंद्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए नागालैंड राज्य सरकार, गृह विभाग, पुलिस जनरल शाखा, कोहिमा की अधिसूचना सं. पीओएल/जीईएन/एमआईएससी/2007 दिनांक 9 मार्च, 2010 द्वारा प्राप्त सहमति से सूचना प्रौद्योगिकी (संशोधन) अधिनियम, 2008 (2009 की अधिनियम संख्या 10) की धारा 65, 66, 66-ए, 66-बी, 66-सी, 66-डी, 66-ई, 66-एफ, 67, 67-ए, 67-बी, 67-सी, 84-बी, 84-सी एवं 85 के अंतर्गत दंडनीय अपराधों और उपर्युक्त अपराधों के संबंध में प्रयासों, दुष्टचर्यों तथा षड्यंत्रों तथा उस संव्यवहार के अनुक्रम में किए गए अपराध/अपराधों या उन्हीं तथ्यों से उद्भूत मामलों का अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार संपूर्ण नागालैंड राज्य के संबंध में करती है।

[फा. सं. 224/1/2009-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 3rd November, 2011

S.O. 3183.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Nagaland, Home Department, Police General Branch, Kohima vide Notification No. POL/GEN/MISC/2007 dated 9th March, 2010, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Nagaland for investigation of offences punishable under Sections 65, 66, 66-A, 66-B, 66-C, 66-D, 66-E, 66-F, 67, 67-A, 67-B, 67-C, 84-B, 84-C, and 85 of the Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 224/1/2009-AVD-II]

RAJIV JAIN, Under Secy.

मुख्य आयकर आयुक्त का कार्यालय

जयपुर, 31 अक्टूबर, 2011

सं. 10/2011-12

का.आ. 3184.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23 सी) की उपधारा (via) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्वारा निर्धारण वर्ष 2011-12 एवम् आगे के लिए कथित धारा के उद्देश्य से "अल-अन्सार वेलफेयर सोसाइटी (नेशनल हॉस्पिटल), जयपुर" को स्वीकृति देते हैं।

बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23 सी) की उपधारा (via) के प्रविधानों के अनुरूप कार्य करे।

[क्रमांक: मुआआ/अआआ/(समन्वय)/जय/10(23सी)/(via)/
2011-12]

बृजेश गुप्ता, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX

Jaipur, the 31st October, 2011

No. 10/2011-12

S.O. 3184.—In exercise of the powers conferred by sub-clause (via) of clause (23 C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962 the Chief Commissioner of income-tax, Jaipur hereby approves "Al-Ansar Welfare Society (National Hospital), Jaipur" for the purpose of said Section for the A.Y. 2011-12 & onwards.

Provided that the society conforms to and complies with the provisions of sub-clause (via) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/Addl. CIT(Hqrs.)/10(23C)(via)/2011-12]

BRIJESH GUPTA, Chief Commissioner of Income-tax

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 31 अक्टूबर, 2011

का.आ. 3185.—इस विभाग की दिनांक 91 जुलाई, 2011 की समसंख्यक अधिसूचना के अधिक्रमण में तथा राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उपखंड (1), खण्ड 5, खण्ड 6, खण्ड 7 और खण्ड 8 के उपखंड (1) के साथ

पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण), अधिनियम, 1970/1980 की धारा 9 की उपधारा (3) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्वारा, श्री देवेन्द्र पाल सिंह, आईएएस (उत्तर प्रदेश : 80) (जन्म तिथि 04-01-1954) को उनके पदभार ग्रहण करने की तारीख से 31-01-2014 तक अर्थात् उनकी अधिवर्षिता की तारीख तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, पंजाब एंड सिंध बैंक के अध्यक्ष एवं प्रबंध निदेशक के रूप में नियुक्त करती है।

[फा. सं. 9/8/2009-बीओ-1]

विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 31st October, 2011

S.O. 3185.— In supersession of this Department's notification of even number dated 1st July, 2011 and in exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3, clause 5, clause 6, clause 7 and sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Devinder Pal Singh, IAS (UP : 80) (DoB : 04-01-1954) as the Chairman and Managing Director, Punjab & Sind Bank from the date of taking over charge and upto 31-01-2014, i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[F.No. 9/8/2009-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 31 अक्टूबर, 2011

का.आ. 3186.— दिनांक 20 अक्टूबर, 2008 की समसंख्यक अधिसूचना के आंशिक संशोधन में तथा रुग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 की धारा 6 की उपधारा (2) के साथ पठित धारा 4 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री निर्मल सिंह, आईएएस (तमिलनाडु : 70) (सेवानिवृत्त) को औद्योगिक और वित्तीय पुनर्निर्माण बोर्ड (बीआईएफआर) के सदस्य के रूप में दिनांक 31-10-2008 से उनके 65 वर्ष की आयु प्राप्त कर लेने (अर्थात् 9 जनवरी, 2013) तक अथवा बीआईएफआर के समाप्त होने तक अथवा अगला आदेश होने तक, इनमें से जो भी पहले हो, नियुक्त करती है।

[फा. सं. 20(1)/2004-आईएफ-II]

रमण कुमार गौड़, अवर सचिव

New Delhi, the 31st October, 2011

S.O. 3186.— In partial modification of Notification of even number dated 20th October, 2008 and in exercise of the powers conferred by sub-section (2) of Section 4 read with sub-section (2) of Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985, the Central Government hereby appoints Shri Nirmal Singh, IAS (TN : 70) (Retd), as Member, Board for Industrial and Financial Reconstruction (BIFR) w.e.f. 31-10-2008 till he attains the age of 65 years (i.e. 9th January, 2013) or till the abolition of BIFR or until further orders, whichever event occurs the earliest.

[F.No. 20(1)/2004-IF-II]

RAMAN KUMAR GAUR, Under Secy.

नई दिल्ली, 1 नवम्बर, 2011

का.आ. 3187.— राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9(2) के उपखंड (ख) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3(छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा, श्री निरंजन कुमार, अग्रवाल (जन्म तिथि 22-10-1958) को सनदी लेखाकार श्रेणी के अंतर्गत उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्षों की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, इंडियन ओवरसीज बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के रूप में नामित करती है।

[फा. सं. 6/29/2010-बीओ-1]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 1st November, 2011

S.O. 3187.— In exercise of the powers conferred by sub-section 3 (g) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby nominates Shri Niranjana Kumar Agarwal (DoB: 22-10-1958), as part-time non-official director under Chartered Accountant category on the Board of Indian Overseas Bank, for a period of three years from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 6/29/2010-BO-I]

VIJAY MALHOTRA, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

नई दिल्ली, 1 सितम्बर, 2011

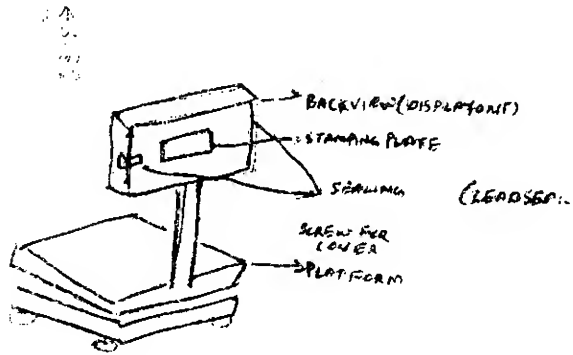
का.आ. 3188.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स माइक्रोपैक इंडस्ट्रियल इंस्ट्रूमेंट, ए-205, शास्त्री नगर, मेरठ, उत्तर प्रदेश द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले "एचडब्ल्यूसी" श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) के मॉडल का, जिसके ब्रांड का नाम "माइक्रोपैक" है (जिसे इसमें पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/11/253 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप-कद और कदर मापन सुविधा सहित) है। इसको अधिकतम क्षमता 200 कि.ग्रा. और न्यूनतम क्षमता 400 ग्रा. है। सत्यापन मापमान अन्तराल (ई) 20 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनलात्मक धारित, आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदिशित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-1



आकृति -2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी कॅलिब्रेशन तक पहुंच की सुविधा है। बाहरी कॅलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 500 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10 के, 2×10 के, 5×10 के, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(151)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

MINISTRY OF CONSUMER, AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(Department of Consumer Affairs)

New Delhi, the 1st September, 2011

S.O. 3188.— Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indication of medium accuracy (Accuracy class-III) of series "HWC" and with brand name "MICROPACK" (hereinafter referred to as the said model), manufactured by M/s Micropack Industrial Instruments, A- 205, Shastri Nagar, Meerut, Uttar Pradesh and which is assigned the approval mark IND/09/11/253;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform type with height and waist measurement facilities) with a maximum capacity of 200kg and minimum capacity of 400g. The verification scale interval (e) is 20g. It has a tare device with a 100 percent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50Hertz alternative current power supply.

Figure-1

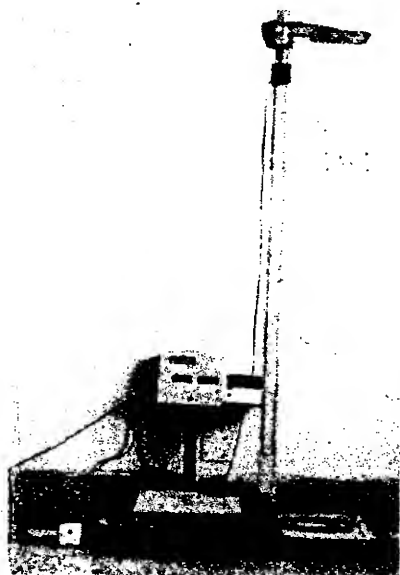


Fig-1

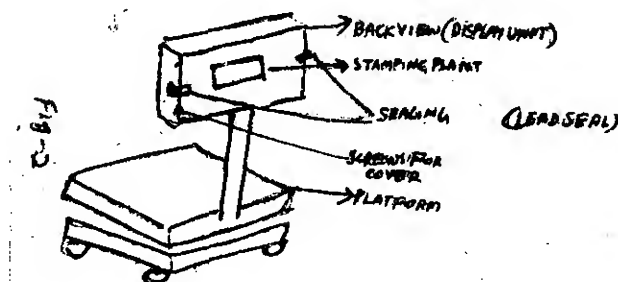


Figure-2 Schematic Diagram of sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, then seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with capacity up to 500kg. with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21(151)/2011]

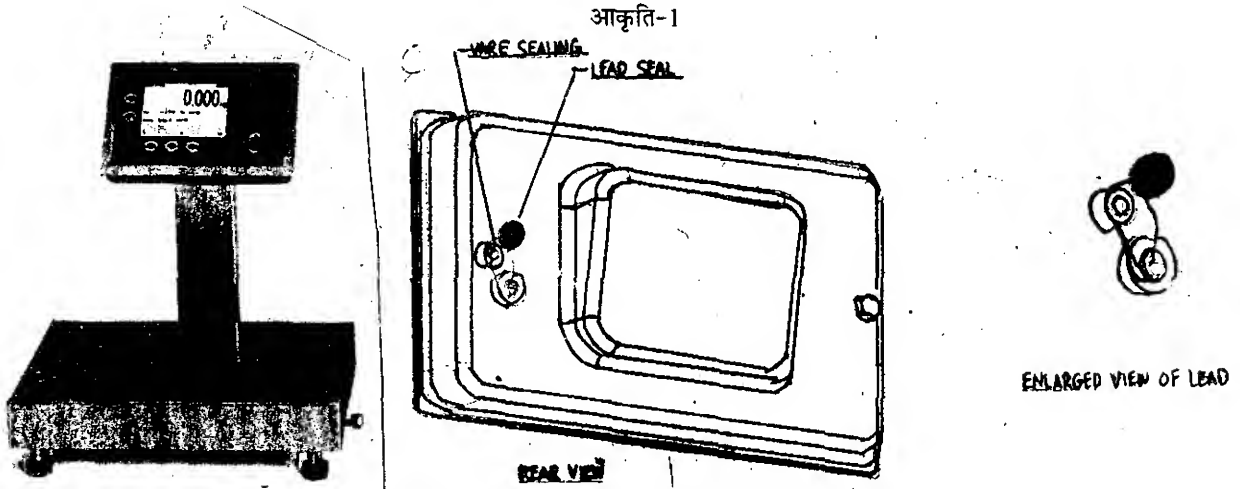
B. N. DIXIT, Director of Legal Metrology

नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3189.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स मेटलर टोलडो इंडिया प्राइवेट लिमिटेड, अमर हिल, एस बी रोड, पोवई, मुंबई-400072 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग II) वाले "आईसीएस XXX" श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबलटाप टाइप) के मॉडल का, जिसके ब्रांड का नाम "मेटलर टोलडो" है (जिसे इसमें पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/11/299 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबलटाप टाइप) है। इसकी अधिकतम क्षमता 15 कि.ग्रा. और न्यूनतम क्षमता 50 ग्रा. है। सत्यापन मापमान अंतराल (ई) 1 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित, आधेयतुलन प्रभाव है। लिक्विड क्रिस्टल डायोड (एलसीडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम।

डिस्पले की बाड़ी में से सीलिंग वायर निकालकर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकालकर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि. ग्रा. से 50 मि.ग्रा. तक के "ई" मान के लिए 100 से 100,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) और 100 मि.ग्रा. या उससे अधिक के "ई" मान के लिए 5000 से 100,000 तक रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10के, 2×10के, 5×10के, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(178)/2011]

बी.एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3189.— Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of high accuracy (Accuracy class-II) of series "ICSxxx" and with brand name "METTLER-TOLEDO" (hereinafter referred to as the said model), manufactured by M/s Mettler-Toledo India Private Limited, Amar Hill, S.V. Road, Powai, Mumbai-400072 and which is assigned the approval mark IND/09/11/299;

The said model is a strain gauge type load cell based non-automatic instrument (Table Top type) with a maximum capacity of 15kg and minimum capacity of 50g. The verification scale interval (e) is 1g. It has a tare device with a 100 percent subtractive retained tare effect. The Liquid Crystal Display (LCD) indicates the weighing result. The instrument operates on 230 Volts, 50Hertz alternative current power supply.

Figure-1

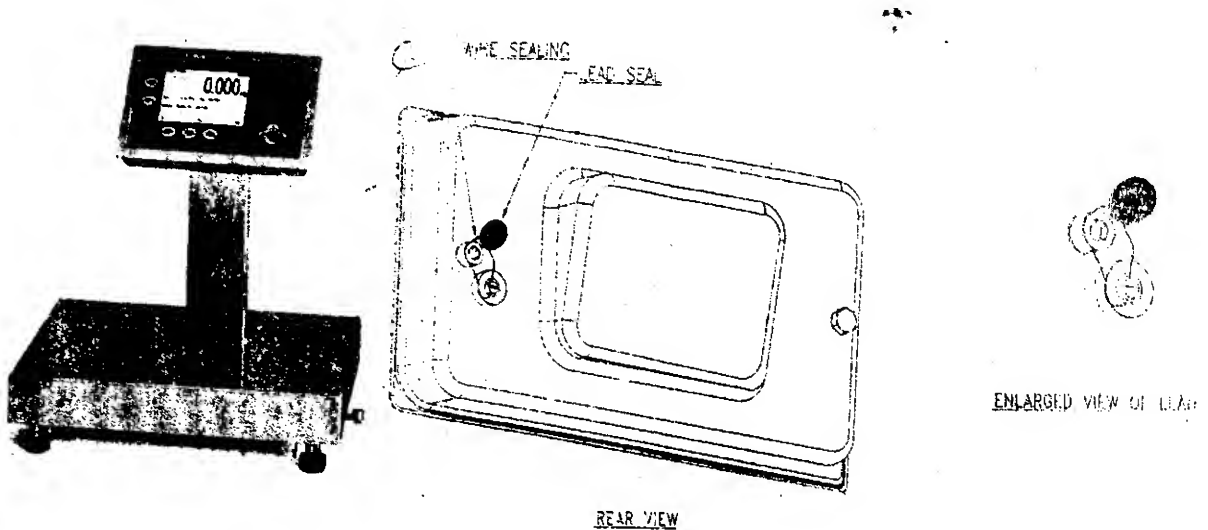


Figure-2 Schematic Diagram of sealing provision of the model.

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, then seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50kg with verification scale interval (n) in the range of 100 to 100,000 for 'e' value of 1mg to 50mg and with verification scale interval (n) in the range of 5000 to 100,000 for 'e' value of 100mg or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21(178)/2011]

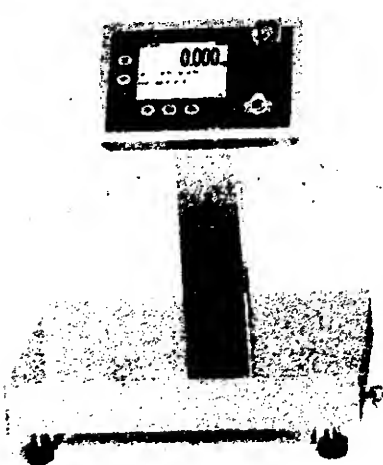
B. N. DIXIT, Director of Legal Metrology

नई दिल्ली, 1 सितम्बर, 2011

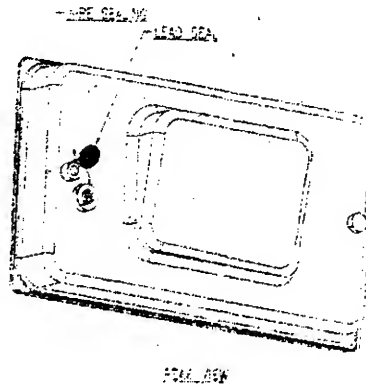
का.आ. 3190.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा शक्तियों का प्रयोग करते हुए मैसर्स मेटलर टोलडो इंडिया प्राइवेट लिमिटेड, अमर हिल, एस वी रोड, पोवई, मुंबई-400072 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले "आईसीएस xxx" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबलटाप टाइप) के मॉडल का, जिसके ब्रांड का नाम "मेटलर टोलडो" है (जिसे इसमें पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/11/300 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबलटाप टाइप) है। इसकी अधिकतम क्षमता 6 कि.ग्रा. और न्यूनतम क्षमता 20 ग्रा. है। सत्यापन मापमान अंतराल (ई) 1 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित, आधेयतुलन प्रभाव है। लिक्विड क्रिस्टल डायोड (एलसीडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टोप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपे योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 100 मि. ग्रा. से 2 ग्रा. तक के "ई" मान के लिए 100 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) और 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^*$, $2 \times 10^*$, $5 \times 10^*$, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(178)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3190.— Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of medium accuracy (Accuracy class-III) of series "ICSxxx" and with brand name "METLER-TOLEDO" (hereinafter referred to as the said model), manufactured by M/s Mettler-Toledo India Private Limited, Amar Hill, S.V. Road, Powai, Mumbai-400072 and which is assigned the approval mark IND/09/11/300;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Table Top type) with a maximum capacity of 6kg. and minimum capacity of 20g. The verification scale interval (e) is 1g. It has a tare device with a 100 percent subtractive retained tare effect. The Liquid Crystal Display (LCD) indicates the weighing result. The instrument operates on 230 Volts, 50Hertz alternative current power supply.

Figure-1

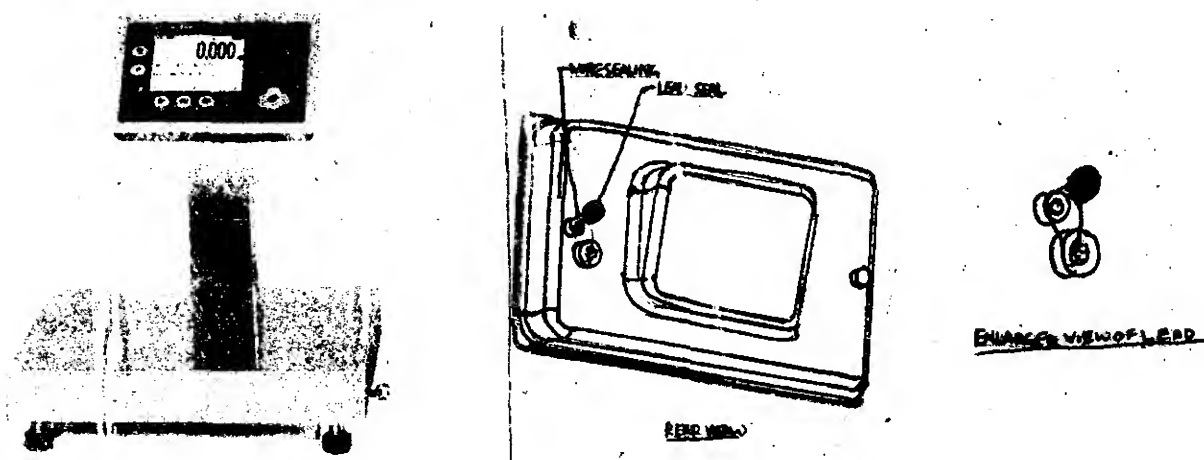


Figure-2 Schematic Diagram of sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, then seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50kg. with verification scale interval (n) in the range of 100 to 10,000 for 'e' value of 100mg. to 2g. and with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21(178)/2011]

B. N. DIXIT, Director of Legal Metrology

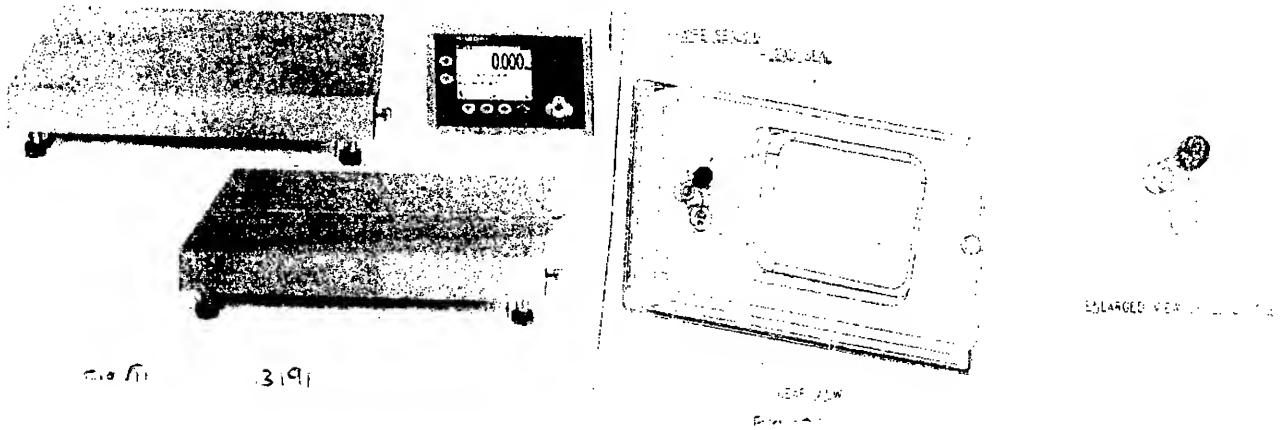
नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3191.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (माडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, विधिक माप विज्ञान (माडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स मेटलर टोलडो इंडिया प्राइवेट लिमिटेड, अमर हिल, एस वी रोड, पोवई, मुंबई-400072 द्वारा विनिर्मित उच्च यथार्थता (यथार्थता वर्ग 11) वाले "आईसीएस xxx" श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) के माडल का, जिसके ब्रांड का नाम "मेटलर टोलडो" है (जिसे इसमें पश्चात् उक्त माडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/11/301 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त माडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) है। इसकी अधिकतम क्षमता 150 कि.ग्रा. और न्यूनतम क्षमता 500 ग्रा. है। सत्यापन मापमान अंतराल (ई) 10 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित, आधेयतुलन प्रभाव है। लिक्विड क्रिस्टल डायोड (एलसीडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति -1



आकृति-2 माडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाडी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले का बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। माडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (माडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त माडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित माडल का विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 100 मि. ग्रा. या उससे अधिक के "ई" मान के लिए 5000 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. से 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^*$, $2 \times 10^*$, $5 \times 10^*$, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(178)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3191.— Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indication of high accuracy (Accuracy class-II) of series "ICSxxx" and with brand name "METTLER-TOLEDO" (hereinafter referred to as the said model), manufactured by M/s Mettler-Toledo India Private Limited, Amar Hill, S. V. Road, Powai, Mumbai-400072 and which is assigned the approval mark IND/09/11/301;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform type) with a maximum capacity of 150kg and minimum capacity of 500g. The verification scale interval (e) is 10g. It has a tare device with a 100 percent subtractive retained tare effect. The Liquid Crystal Display (LCD) indicates the weighing result. The instrument operates on 230 Volts, 50Hertz alternative current power supply.

Figure-1

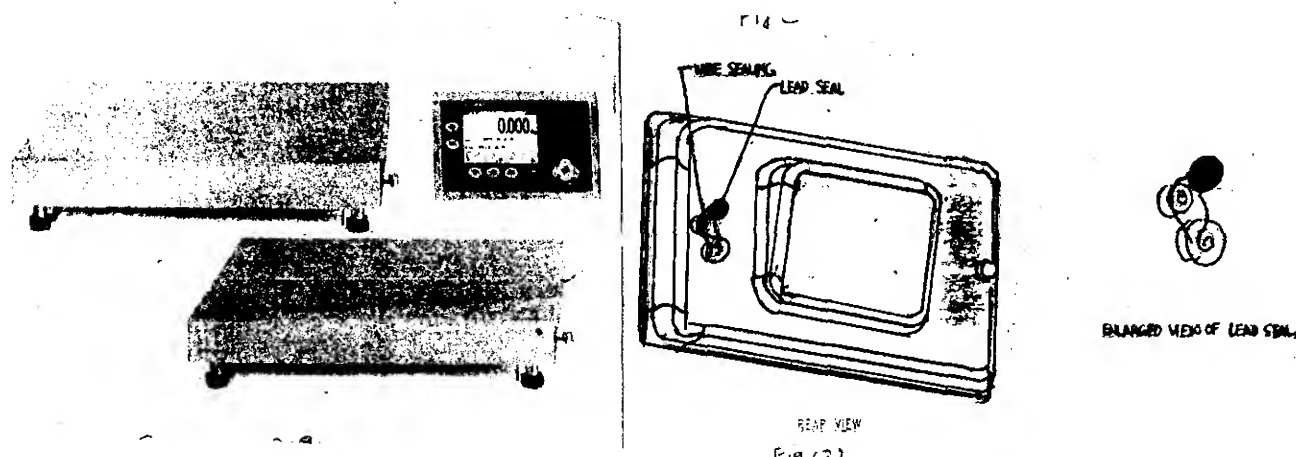


Figure-2 Schematic Diagram of sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50kg. and up to 5000kg. with verification scale interval (n) in the range of 5000 to 10,0000 for 'e' value of 100mg. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F.No. WM-21(178)/2011]

B. N. DIXIT, Director of Legal Metrology

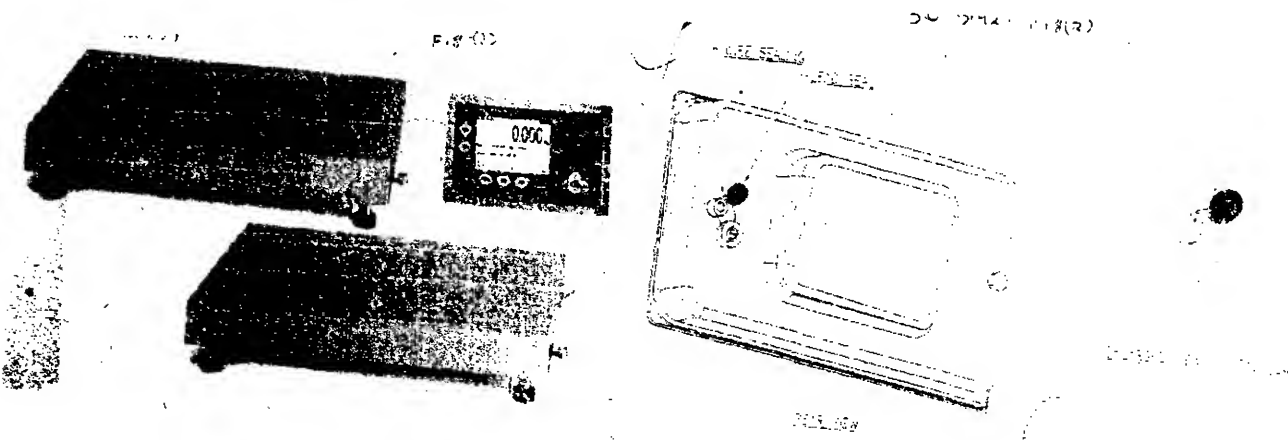
नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3192.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (माडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त माडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, विधिक माप विज्ञान (माडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा शक्तियों का प्रयोग करते हुए मैसर्स 'मेटलर टोलडो इंडिया प्राइवेट लिमिटेड, अमर हिल, एस वी रोड, पोवई, मुंबई-400072 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले "आईसीएस xxx" श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) के माडल का, जिसके ब्रांड का नाम "मेटलर टोलडो" है (जिसे इसमें इसके पश्चात् उक्त माडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/11/302 समनुदर्शित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त माडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) है। इसकी अधिकतम क्षमता 150 कि.ग्रा. और न्यूनतम क्षमता 400 ग्रा. है। सत्यापन मापमान अन्तराल (ई) 20 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यक्तनात्मक धारित, आधेयतुलन प्रभाव है। लिक्विड क्रिस्टल डायोड (एससीडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति-1



आकृति-2 माडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। माडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (माडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त माडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित माडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. से 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^3 , 2×10^3 , 5×10^3 के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(178)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3192.— Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indication of medium accuracy (Accuracy class-III) of series "ICSxxx" and with brand name "METTLER-TOLEDO" (hereinafter referred to as the said model), manufactured by M/s Mettler-Toledo India Private Limited, Amar Hill, S.V. Road, Powai, Mumbai-400072 and which is assigned the approval mark IND/09/11/302;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform type) with a maximum capacity of 150kg. and minimum capacity of 400g. The verification scale interval (e) is 20g. It has a tare device with a 100 percent subtractive retained tare effect. The Liquid Crystal Display (LCD) indicates the weighing result. The instrument operates on 230 Volts, 50Hertz alternative current power supply.

Figure-1

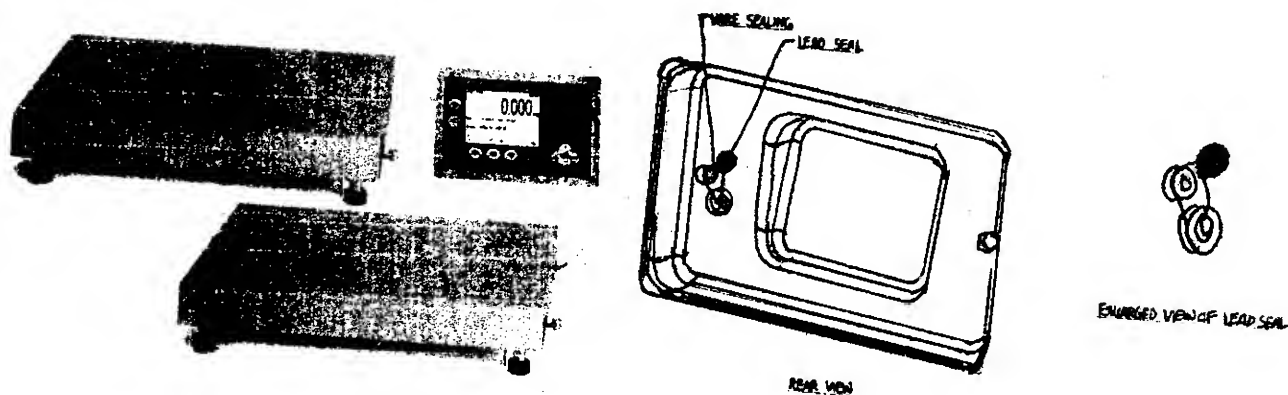


Figure-2 Schematic Diagram of sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50kg. and up to 5000kg. with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F.No. WM-21(178)/2011]

B. N. DIXIT, Director of Legal Metrology

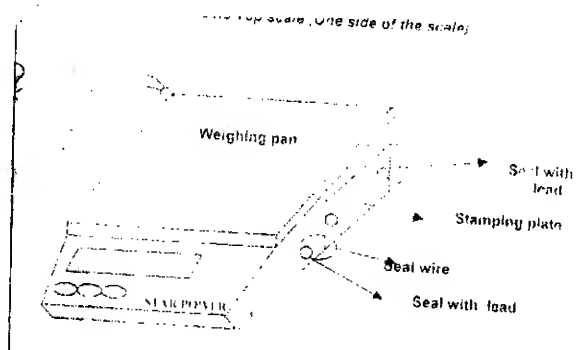
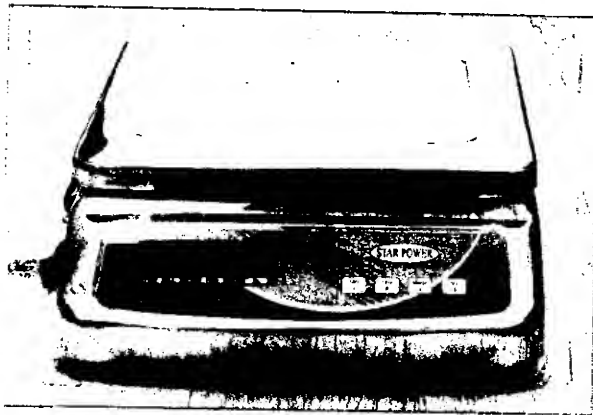
नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3193.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स कालनेट सिस्टम्स, आदर्श नगर, कॉन नगर, हुगली, (पश्चिम बंगाल) द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले "एसटी श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबल टाप टाइप) के मॉडल का, जिसके ब्रांड का नाम "स्टार पॉवर" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/11/247 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबल टाप टाइप) है। इसकी अधिकतम क्षमता 30 कि.ग्रा. और न्यूनतम क्षमता 100 ग्रा. है। सत्यापन मापमान अन्तराल (ई) 5 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित, आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम।

डिस्पले की बाड़ी में से सीलिंग वायर निकालकर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकालकर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 100 मि. ग्रा. से 2 ग्रा. तक के "ई" मान के लिए 100 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) और 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^*$, $2 \times 10^*$, $5 \times 10^*$, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(148)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3193.— Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of Medium accuracy (Accuracy class-III) of series "ST" and with brand name "STAR POWER" (hereinafter referred to as the said model), manufactured by M/s Calnet Systems, Adarsh Nagar, Kon Nagar, Hooghly (W.B.) and which is assigned the approval mark IND/09/11/247;

The said model is a strain gauge type load cell based non-automatic instrument (Table Top Type) with a maximum capacity of 30kg and minimum capacity of 100g. The verification scale interval (e) is 5g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50Hertz alternative current power supply.

Figure-1

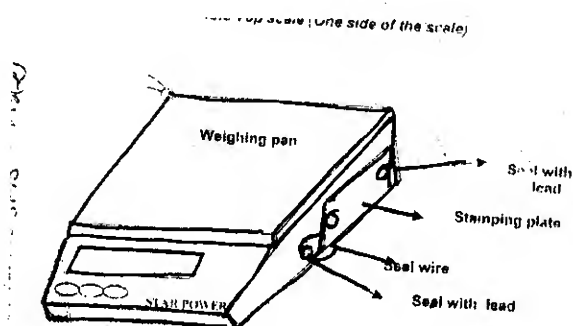
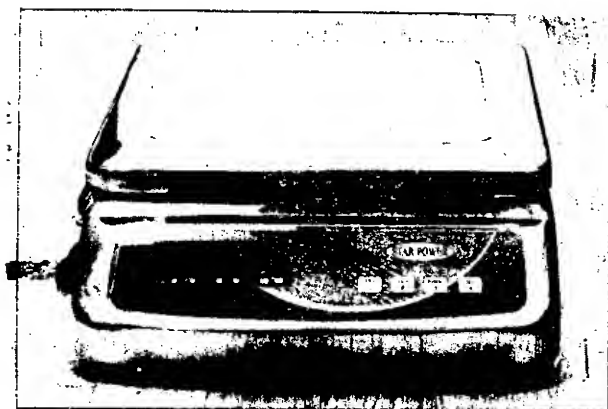


Figure-2 Schematic Diagram of sealing provision of the model.

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instruments has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the powers conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity 50kg with verification scale interval (n) in the range of 100 to 10,000 for 'e' value of 100mg to 2g. and with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21(148)/2011]

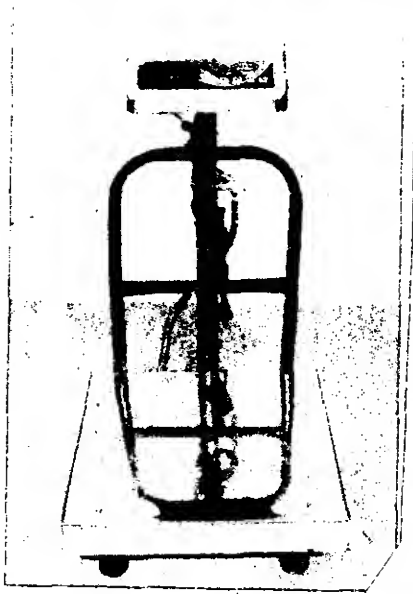
B. N. DIXIT, Director of Legal Metrology

नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3194.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

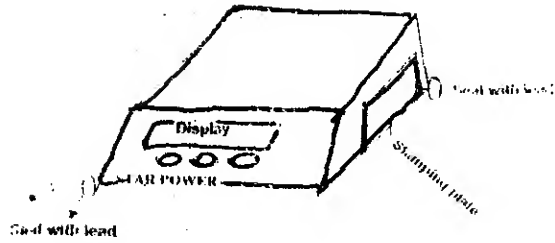
अतः अब केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स कालनेट सिस्टम्स, आदर्श नगर, कॉन नगर, हुगली, (पश्चिम बंगाल) द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले “एसपी” श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) के मॉडल का, जिसके ब्रांड का नाम “स्टार पावर” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/11/248 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) है। इसकी अधिकतम क्षमता 1000 कि.ग्रा. और न्यूनतम क्षमता 2 ग्रा. है। सत्यापन मापमान अन्तराल (ई) 100 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित, आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति -1

For Electronic Platform Scale (One side of the indication)



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम।

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टाप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के “ई” मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अन्तराल (एन) सहित 50 कि. ग्रा. से 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और “ई” मान 1×10^3 , 2×10^3 , 5×10^3 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(148)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3194.— Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indication of Medium accuracy (Accuracy class-III) of series "SP" and with brand name "STAR POWER" (hereinafter referred to as the said model), manufactured by M/s. Calnet Systems, Adarsh Nagar, Kon Nagar, Hooghly (W.B.) and which is assigned the approval mark IND/09/11/248;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform Type) with a maximum capacity of 1000kg and minimum capacity of 2kg. The verification scale interval (e) is 100g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50Hertz alternative current power supply.

Figure-1

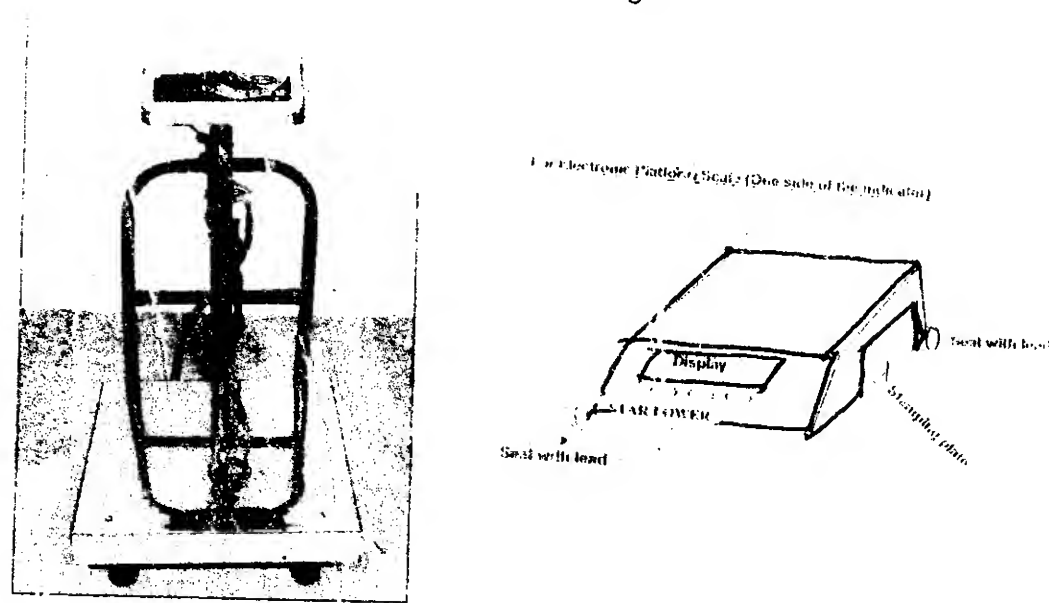


Figure-2 Schematic Diagram of sealing provision of the model.

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, then seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50kg and up to 5000 kg. with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F.No. WM-21(148)/2011]

B. N. DIXIT, Director of Legal Metrology

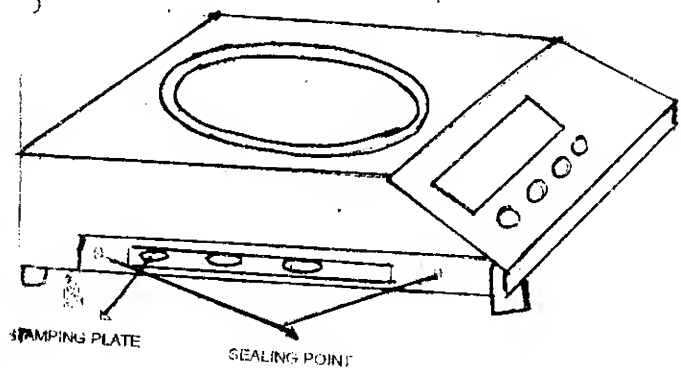
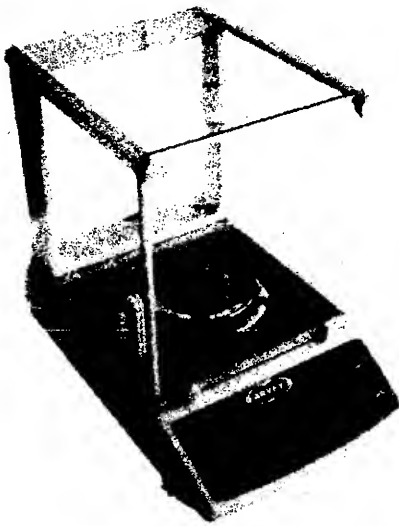
नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3195.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स अरवे स्केल्स कंपनी, 27, थदगाम रोड, जी सी टी पोस्ट, कोयम्बतूर-641013 द्वारा विनिर्मित विशेष यथार्थता (यथार्थता वर्ग 1) वाले "234" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबल टाप टाइप) के मॉडल का, जिसके ब्रांड का नाम "अरवे" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/11/233 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक इलैक्ट्रो मैग्नेटिक फोर्स कम्पेन्सेशन प्रिन्सिपल पर आधारित अस्वचालित तोलन उपकरण (टेबल टाप टाइप) है। इसकी अधिकतम क्षमता 3000 ग्रा. है और न्यूनतम क्षमता 1 ग्रा. है। सत्यापन मापमान अन्तराल (ई) 10 मि. ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित, आधेयतुलन प्रभाव है। लिक्विड क्रिस्टल डायोड (एल सी डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

इंडीकेटर की राइट साइड/बैंक साइड के होल्ज में से सीलिंग वायर निकालकर सीलिंग की जाती है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि. ग्रा. या अधिक के "ई" मान के लिए 50,000 या अधिक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^{\circ}$, $2 \times 10^{\circ}$, $5 \times 10^{\circ}$ के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(137)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3195.— Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of special accuracy (Accuracy class-I) of series "234" and with brand name "ARVEY" (hereinafter referred to as the said model), manufactured by M/s Arvey Scales Company, 27, Thadagam Road, G.C.T. Post, Coimbatore-641013 and which is assigned the approval mark IND/09/11/233;

The said model is a Electro Magnetic Force Compensation Principle based non-automatic weighing instrument (Table top Type) with a maximum capacity of 3000g and minimum capacity of 1g. The verification scale interval (e) is 10mg. It has a tare device with a 100 percent subtractive retained tare effect. The Liquid Crystal Display (LCD) indicates the weighing result. The instrument operates on 230 Volts, 50Hertz alternative current power supply.

Figure-1

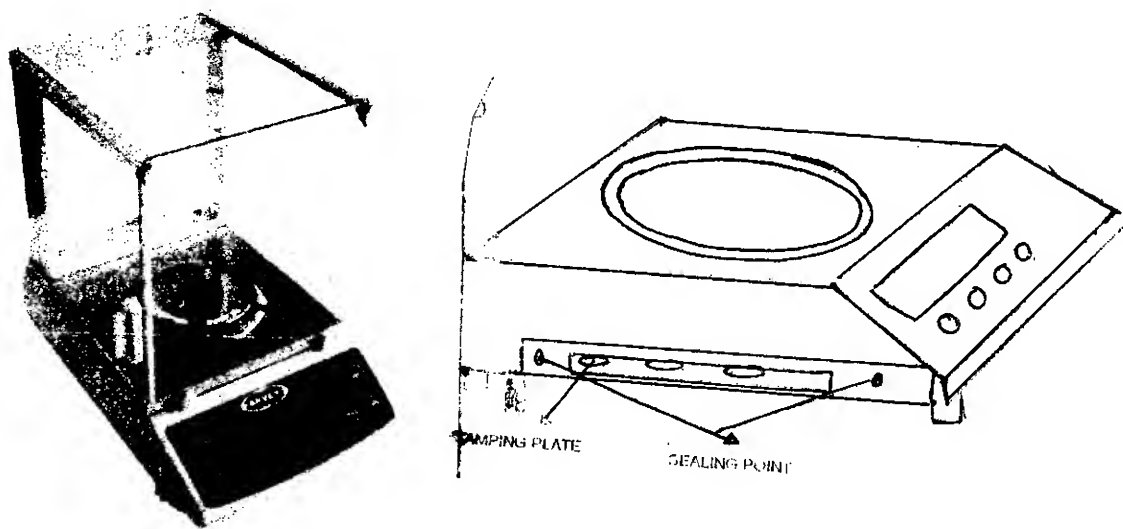


Figure-2 Schematic Diagram of sealing provision of the model.

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50kg with verification scale interval (n) in the range of 50,000 or more for 'e' value of 1mg or more and with 'e' value of 1×10^k to 2×10^k or 3×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F.No. WM-21(137)/2011]

B. N. DIXIT, Director of Legal Metrology

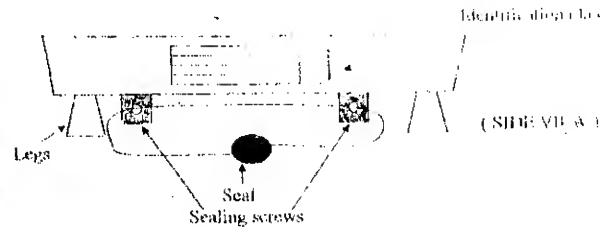
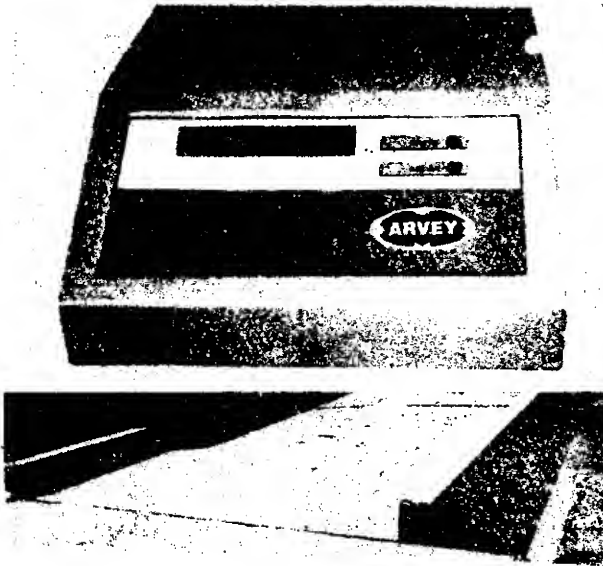
नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3196.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा जारी प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप हैं और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स अरवे स्कैल्स कंपनी, 27, थदगाम रोड, जी सी टी पोस्ट, कोयम्बतूर-641013 द्वारा विनिर्मित मध्यम यथार्थता (यथाधृता वर्ग-III) वाले '786 डब्ल्यूबी' श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (इलेक्ट्रॉनिक वेब्रिज-मल्टी लोड तैल टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "अरवे" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/11/234 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (इलेक्ट्रॉनिक वेब्रिज-मल्टी लोड तैल टाइप) है। इसकी अधिकतम क्षमता 80 टन और न्यूनतम क्षमता 400 कि.ग्रा. है। सत्यापन मापमान अन्तराल (ई) 20 कि.ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में ऑप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 5 टन से 200 टन तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^*$, $2 \times 10^*$, $5 \times 10^*$, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(137)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3196.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Electronic Weighbridge-Multi Load Cell Type) with digital indication of Medium accuracy (accuracy class-III) of series "786 WB" and with brand name "ARVEY" (hereinafter referred to as the said model), manufactured by M/s. Arvey Scales Company, 27, Thadagam Road, G. C.T. Post, Coimbatore-641013 and which is assigned the approval mark IND/09/11/234 ;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Electronic Weighbridge-Multi Load Cell Type) with a maximum capacity of 80 tonne and minimum capacity of 400 kg. The verification scale interval (e) is 20 kg. It has a tare device with a 100 percent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

Figure-1 Model

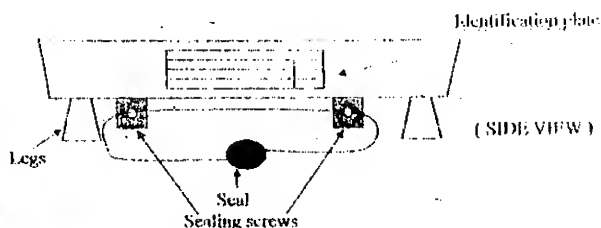


Figure-2 Schematic Diagram of sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with above 5 tonne and up to 200 tonne with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F.No. WM-21 (137)/2011]

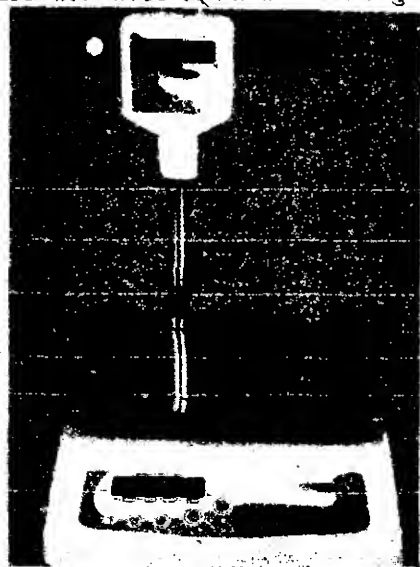
B. N. DIXIT, Director of Legal Metrology

नई दिल्ली, 1 सितम्बर, 2011

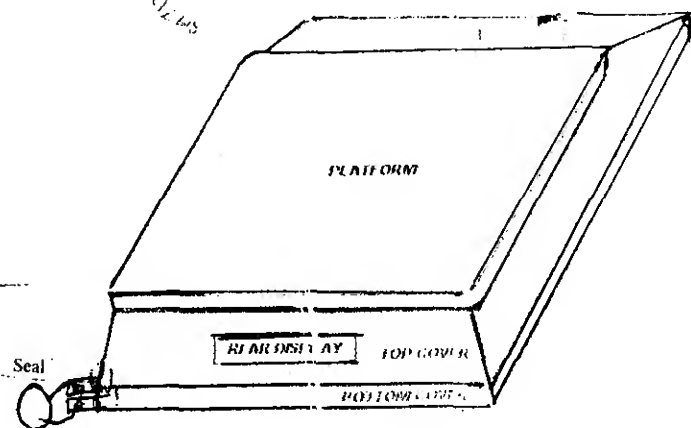
का.आ. 3197.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथाथता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा शक्तियों का प्रयोग करते हुए मैसर्स भरानी इंडस्ट्रीज, एम एस के नगर, सुरमपट्टी वलासू, इरोड-638009 द्वारा विनिर्मित उच्च यथार्थता (यथार्थता वर्ग-II) वाले 'जेएस' श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबल टाप टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "ईईएसए" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/11/269 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबल टाप टाइप) है। इसकी अधिकतम क्षमता 30 कि.ग्रा. और न्यूनतम क्षमता 100 ग्रा. है। सत्यापन मापमान अंतराल (ई) 2 ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे। 1 मि. ग्रा. से 50 मि.ग्रा. तक के "ई" मान के लिए 100 से 100,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) और 100 मि.ग्रा. या उससे अधिक के "ई" मान के लिए 5000 से 100,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^3 , 2×10^3 या 5×10^3 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(162)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3197.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of high accuracy (accuracy class-II) of series "JS" and with brand name "EESAA" (hereinafter referred to as the said model), manufactured by M/s. Bharani Industries, M.S. K. Nagar, Surampatti Valasu, Erode-638009 and which is assigned the approval mark IND/09/11/269 ;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Table Top Type) with a maximum capacity of 30kg. and minimum capacity of 100g. The verification scale interval (e) is 2g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

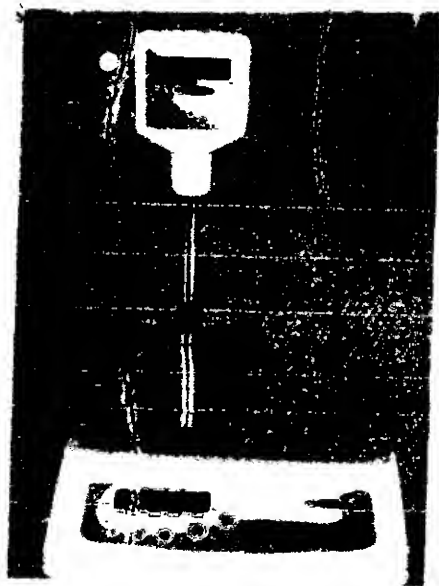


Figure-1 Model

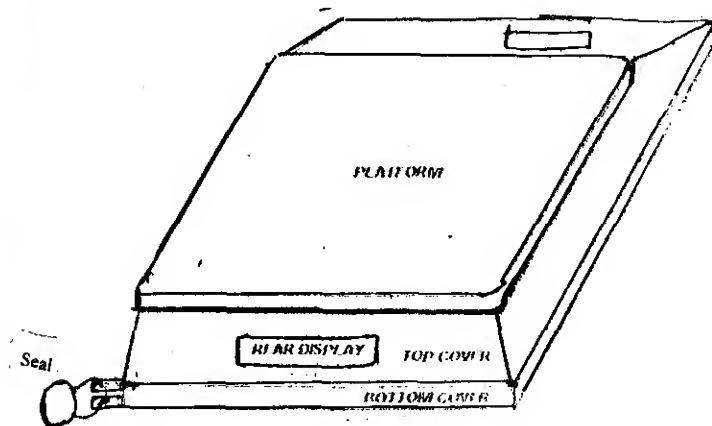


Figure-2 Schematic Diagram of the sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the powers conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50 kg. with verification scale interval (n) in the range of 100 to 100,000 for 'e' value of 1mg. to 50mg. and with verification scale interval (n) in the range of 5000 to 100,000 for 'e' value of 100mg. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F.No. WM-21 (162)/2011]

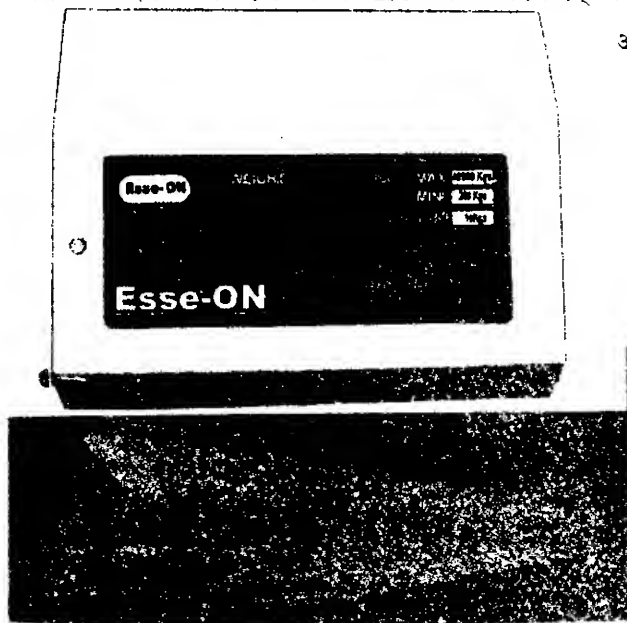
B. N. DIXIT, Director of Legal Metrology

नई दिल्ली, 1 सितम्बर, 2011

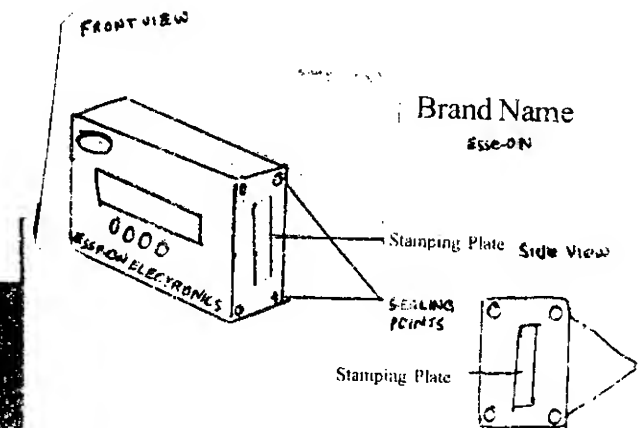
का.आ. 3198.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा जारी उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप हैं और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स एस्से-ऑन इलेक्ट्रॉनिक्स, डी. नं. 19-8-84/जो4, ए.आई.आर. बाई. पास रोड, तिरुपति-517501 आंध्र प्रदेश द्वारा विनिर्मित 'मध्यम यथार्थता (यथार्थता वर्ग-III) वाले 'ईएस-डब्ल्यूबी' शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (इलेक्ट्रॉनिक वेब्रिज-मल्टी लोड सैल टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "एस्से-ऑन" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/11/274 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सैल आधारित अस्वचालित तोलन उपकरण (इलेक्ट्रॉनिक वेब्रिज-मल्टी लोड सैल टाइप) है। इसकी अधिकतम क्षमता 40 टन और न्यूनतम क्षमता 200 कि.ग्रा. है। सत्यापन मापमान अंतराल (ई) 10 कि. ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत प्रतिशत व्यवकलात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) पदार्थ तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के गैस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे। 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 5 टन से 100 टन तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^3 , 2×10^3 या 5×10^3 के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(154)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3198.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Electronic Weighbridge-Multi Load Cell Type) with digital indication of Medium accuracy (Accuracy class-III) of series "ES-VB" and with brand name "Esse-On" (hereinafter referred to as the said model), manufactured by M/s. Esse-On Electronics, D. No. 19-8-84/G4, A. I. R. By Pass Road, Tirupati-517501, Andhra Pradesh and which is assigned the approval mark IND/09/11/274;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Electronic Weighbridge-Multi Load Cell Type) with a maximum capacity of 40 tonne and minimum capacity of 200kg. The verification scale interval (e) is 10kg. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

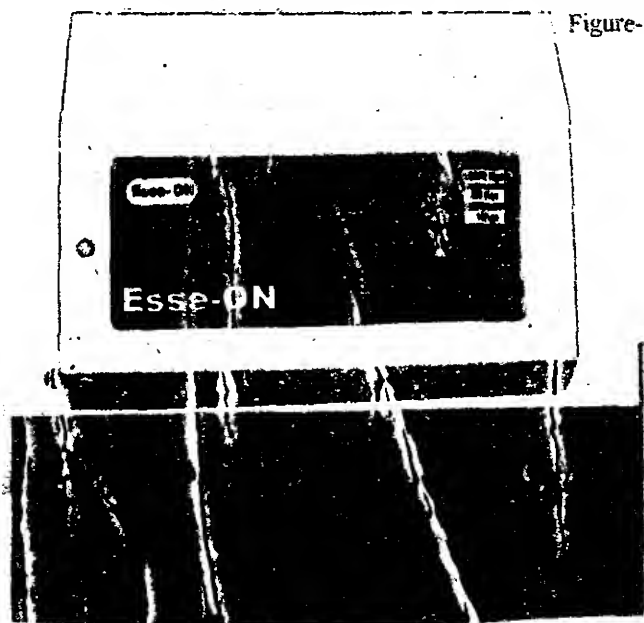


Figure-1 Model

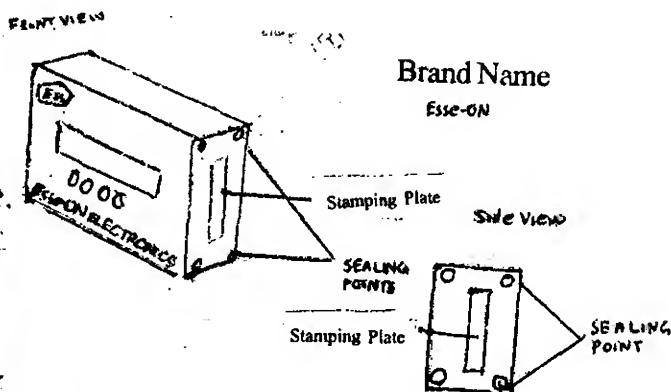


Figure-2 Schematic Diagram of the sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, then seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the powers conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with above 5 tonne and up to 100 tonne with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F. No. WM-21 (154)/2011]

B. N. DIXIT, Director of Legal Metrology

नई दिल्ली, 1 सितम्बर, 2011

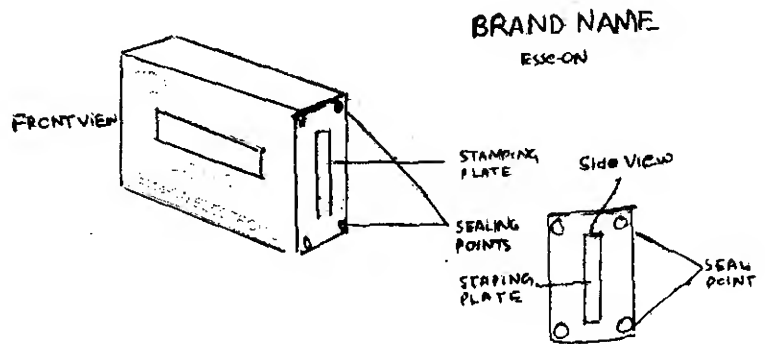
का.आ. 3199.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप हैं और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः, अब, केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा शक्तियों का प्रयोग करते हुए मैसर्स एस्से-ऑन इलेक्ट्रॉनिक्स, डी. नं. 19-8-84/जी4, ए.आई.आर. बाई. पास रोड, तिरुपति-517501 आंध्र प्रदेश द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "ईएस-पीडब्ल्यू" श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (इलेक्ट्रॉनिक व्यक्ति तोलन मशीन-प्रिंटिंग सहित/रहित सुविधा) के मॉडल का, जिसके ब्राण्ड का नाम "एस्से-ऑन" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/11/275 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (इलेक्ट्रॉनिक व्यक्ति तोलन मशीन-प्रिंटिंग सहित/रहित सुविधा) है। इसकी अधिकतम क्षमता 150 कि.ग्रा. है और न्यूनतम क्षमता 1 कि.ग्रा. है। सत्यापन मापमान अंतराल (ई) 50 ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति -1



आकृति -2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 100 मि. ग्रा. से 2 ग्रा. तक के "ई" मान के लिए 100 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 200 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^{-6} , 2×10^{-6} या 5×10^{-6} , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

New Delhi, the 1st September, 2011

S.O. 3199.—Whereas the Central Government, after considering the report submitted to it by prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby publishes the certificate of approval of the model of non-automatic weighing instrument (Electronic Person Weighing Scale-with or without printing facility) with digital indication of Medium accuracy (Accuracy class-III) of series "ES-PW" and with brand name "Esse-On" (hereinafter referred to as the said model), manufactured by M/s. Esse-On Electronics, D. No. 19-8-84/G4. A. I. R. By Pass Road, Tirupati-517501, Andhra Pradesh and which is assigned the approval mark IND/09/11/275 ;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Electronic Person Weighing Scale-with or without printing facility) with a maximum capacity of 150 kg and minimum capacity of 1kg. The verification scale interval (e) is 50g. It has a tare device with a 100 percent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.



Figure-1 Model

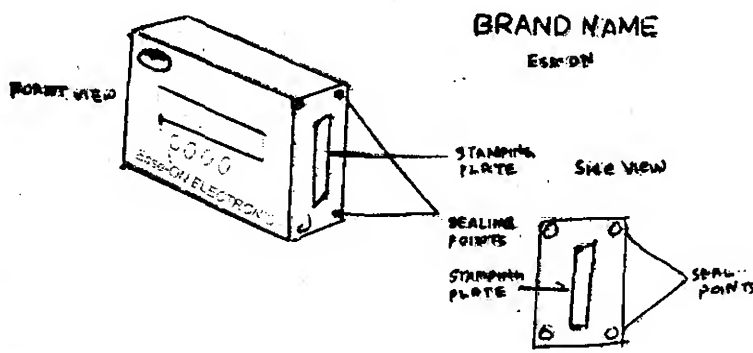


Figure-2 Schematic Diagram of sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 200kg., with verification scale interval (n) in the range of 100 to 10,000 for 'e' value of 100mg to 2g and with verification scale interval (n) in the range of 500 to 10000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21 (154)/2011]

B. N. DIXIT, Director of Legal Metrology

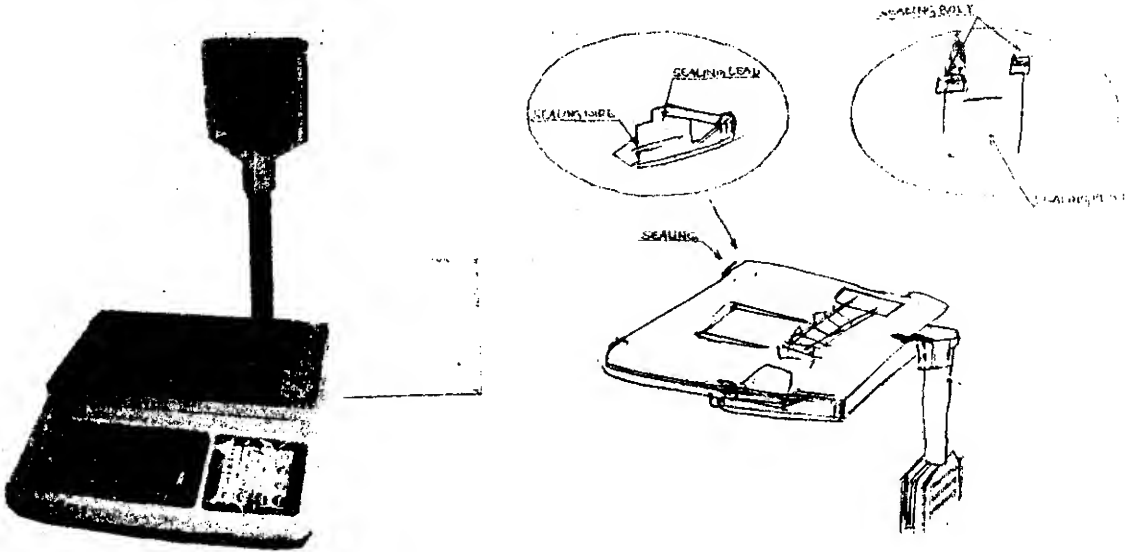
नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3200.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप हैं और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स कास वेइंग इंडिया प्रा.लि., 568, उद्योग विहार, फंज-V, गुडगांव, हरियाणा-122016 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "पीआर" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबल टॉप टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "कास" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/11/267 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबल टॉप टाइप) है। इसकी अधिकतम क्षमता 30 कि.ग्रा. और न्यूनतम क्षमता 200 ग्रा. है। सत्यापन मापमान अन्तराल (ई) 10 ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत प्रतिशत व्यकलात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति -1



आकृति -2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 100 मि.ग्रा. से 2 ग्रा. तक के "ई" मान के लिए 100 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^{-6} , 2×10^{-6} या 5×10^{-6} , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(122)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3200.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of Rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of medium accuracy (accuracy class-III) of series "PR" and with brand name "CAS" (hereinafter referred to as the said model), manufactured by M/s. CAS Weighing India Pvt. Ltd. 568, Udyog Vihar, Phase-V, Gurgaon, Haryana-122016 and which is assigned the approval mark IND/09/11/267;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Table Top Type) with a maximum capacity of 30 kg. and minimum capacity of 200g. The verification scale interval (e) is 10g. It has a tare device with a 100 percent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

Figure-1 Model

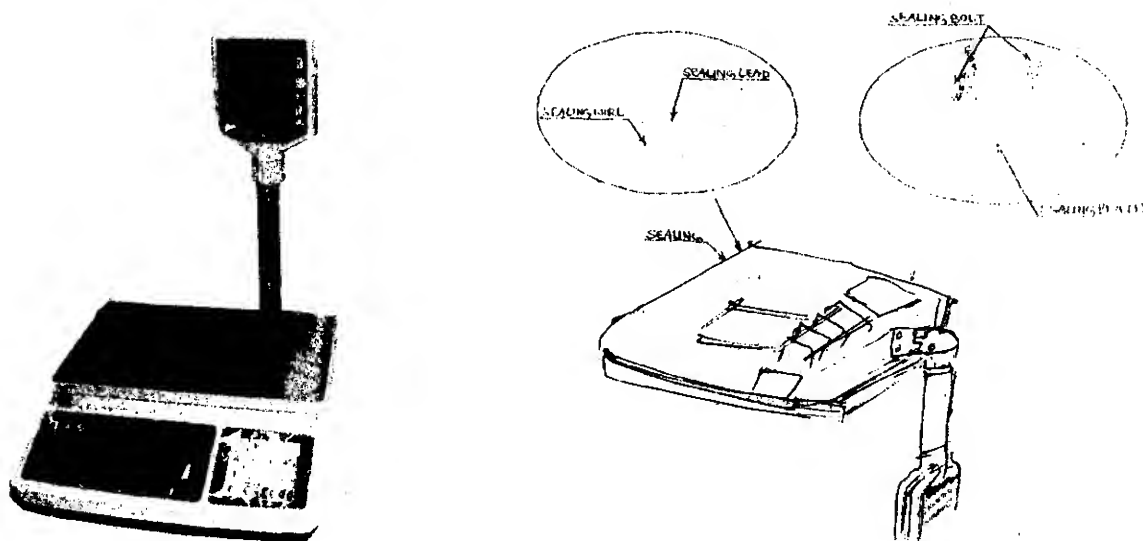


Figure-2 Schematic Diagram of sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50kg with verification scale interval (n) in the range of 100 to 10000 for 'e' value of 100mg. to 2g. and with verification scale interval (n) in the range of 500 to 10000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F. No. WM-21 (122)2011]

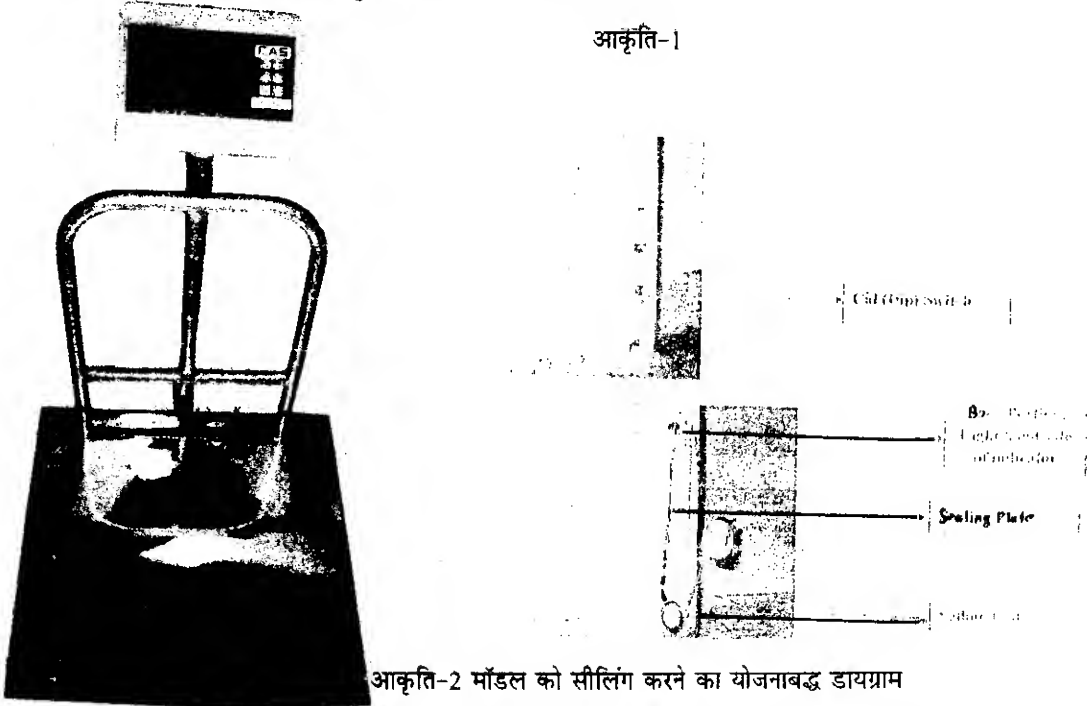
B. N. DIXIT, Director of Legal Metrology

नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3201.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा शक्तियों को प्रयोग करते हुए मैसर्स कास वेईंग इंडिया प्रा.लि., 568, उद्योग विहार, फेज-V, गुडगांव, हरियाणा-122016 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "डीएच" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "कास" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/11/268 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) है। इसकी अधिकतम क्षमता 200 कि.ग्रा. और न्यूनतम क्षमता 400 ग्रा. है। सत्यापन मापमान अन्तराल (ई) 20 ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत प्रतिशत व्यकलात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



इंडिकेटर की राइट साइड/बैक साइड के होल्ज में से सीलिंग वायर निकाल कर सीलिंग की जाती है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी कलिब्रेशन तक पहुंच की सुविधा है। बाहरी कलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अन्तराल (एन) सहित 50 कि.ग्रा. से 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^3 , 2×10^3 , 5×10^3 के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(122)/2011]
बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3201.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said Model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby publishes the certificate of approval of the Model of non-automatic weighing instrument (Platform type) with digital indication of medium accuracy (accuracy class-III) of series "DH" and with brand name "CAS" (hereinafter referred to as the said Model), manufactured by M/s. CAS Weighing India Pvt. Ltd. 568, Udyog Vihar, Phase-V, Gurgaon, Haryana-122016 and which is assigned the approval mark IND/09/11/268;

The said Model is a strain gauge type load cell based non-automatic weighing instrument (Platform Type) with a maximum capacity of 200kg. and minimum capacity of 400g. The verification scale interval (e) is 10kg. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

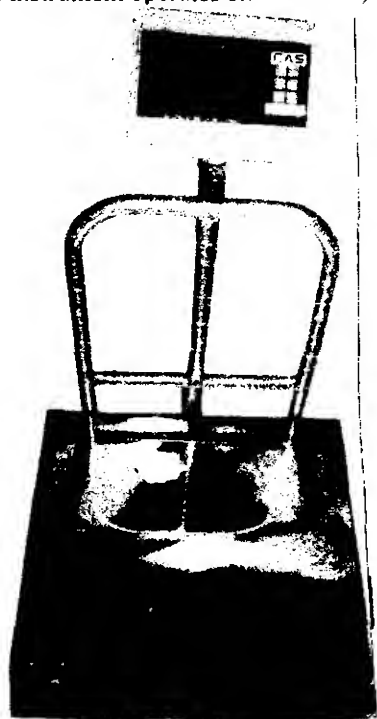


Figure-1 Model

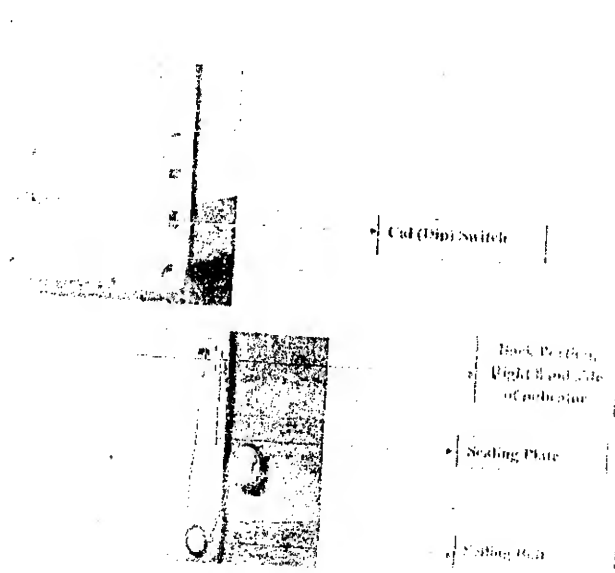


Figure-2 Schematic Diagram of the sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the Model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50kg. and up to 5000 kg. with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F. No. WM-21 (122)/2011]

B. N. DIXIT, Director of Legal Metrology

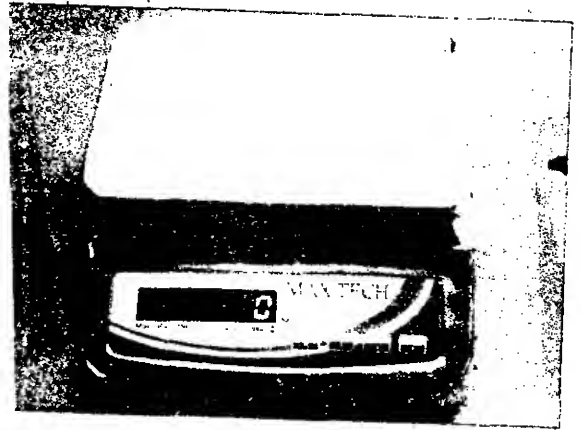
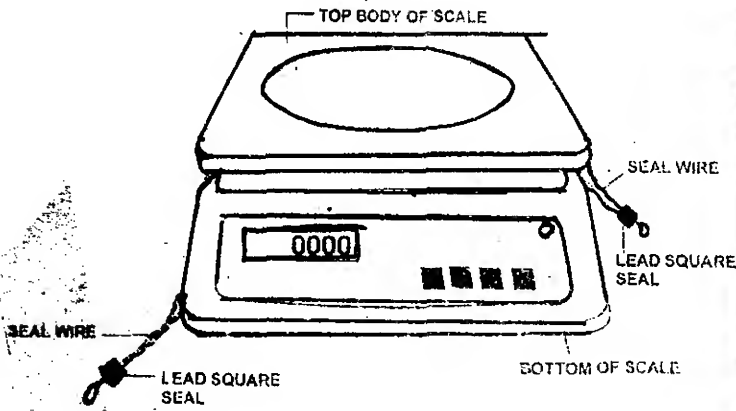
नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3202.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा जारी प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा शक्तियों का प्रयोग करते हुए मैसर्स मालाबार स्केल्स, गार्डन काम्प्लैक्स, गवर्नमेंट अस्पताल के पास, कोदुनगल्लूर, त्रिशूर, 680664, केरल द्वारा विनिर्मित उच्च यथार्थता (यथार्थता वर्ग-II) वाले "एमएसटी" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबलटाप टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "मैक्सटैक" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/11/296 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबलटाप टाइप) है। इसकी अधिकतम क्षमता 30 कि.ग्रा. और न्यूनतम क्षमता 100 ग्रा. है। सत्यापन मापमान अन्तराल (ई) 2 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति -1



आकृति-2—मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम।

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे। मि. ग्रा. से 50 मि.ग्रा. तक के "ई" मान के लिए 100 से 100,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 100 मि.ग्रा. या उससे अधिक के "ई" मान के लिए 5000 से 100,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^*$, $2 \times 10^*$ या $5 \times 10^*$, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(106)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3202.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (i) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby publishes the certificate of approval of the model of non-automatic weighing instrument (Table Top Type) with digital indication of medium accuracy (accuracy class-II) of series "MST" and with brand name "MAXTECH" (herein after referred to as the said model), manufactured by M/s. Malabar Scales, Garden Complex, Near Govt. Hospital, Kollungallur, Thrissur, Pin 680664, Kerala and which is assigned the approval mark IND/09/11/296.

The said model is a strain gauge type load cell based non-automatic weighing instrument (Table Top Type) with a maximum capacity of 30kg. and minimum capacity of 100g. The verification scale interval (e) is 2g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

Figure-1

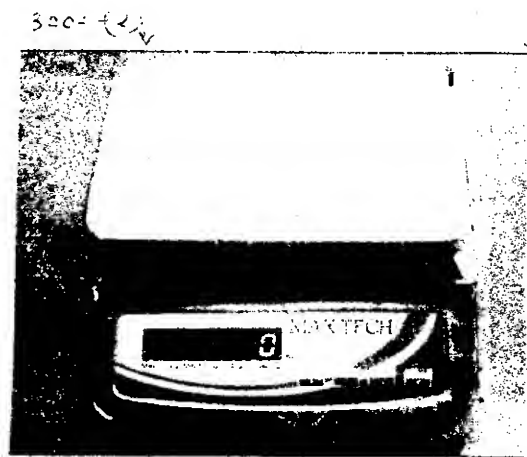
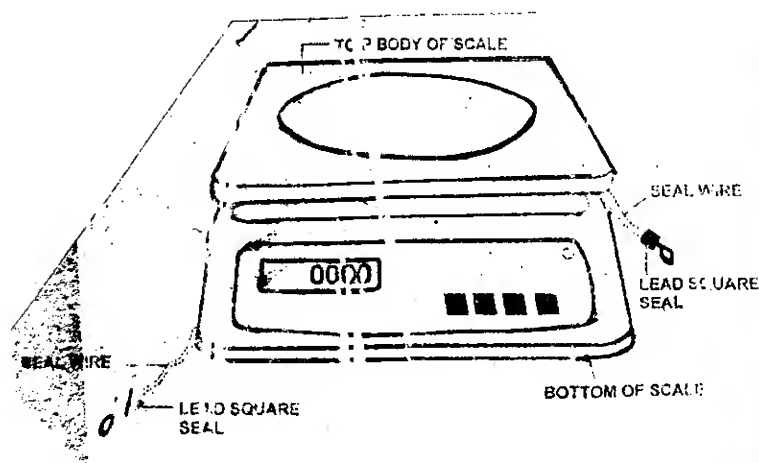


Figure-2—Schematic Diagram of the sealing provision of the model.

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by holes in base plate and top cover of display, then seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50kg. with verification scale interval (n) in the range of 100 to 100,000 for 'e' value of 1mg. to 50mg. and with verification scale interval (n) in the range of 5000 to 100,000 for 'e' value of 100mg. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21 (106)/2011]

B. N. DIXIT, Director of Legal Metrology

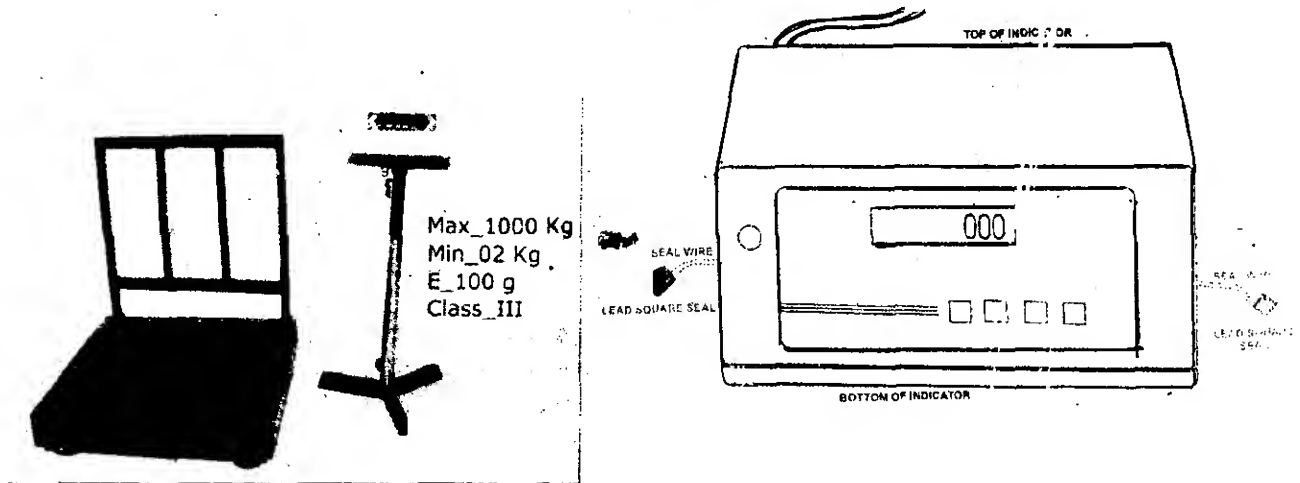
नई दिल्ली, 1 सितम्बर, 2011

का.आ. 3203.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स मालाबार स्कोल्स, गार्डन काम्प्लैक्स, गवर्नमेंट अस्पताल के पास, कोदुनगल्लूर, त्रिशूर, 680664, केरल द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "एमएसपी" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "मैक्सटैक" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/11/297 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेट फार्म टाइप) है। इसकी अधिकतम क्षमता 1000 कि.ग्रा. और न्यूनतम क्षमता 2 कि.ग्रा. है। सत्यापन मापमान अन्तराल (ई) 100 ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत प्रतिशत व्यकलात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उद्दिष्ट करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकाल कर डिस्पले पर सीलिंग की जाती है। सील के साथ जुड़े हुए डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकाल कर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अन्तराल (एन) और 50 कि.ग्रा. से 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^{-5} , 2×10^{-5} या 5×10^{-5} के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(106)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 1st September, 2011

S.O. 3203.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by Section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indication of medium accuracy (accuracy class-III) of series "MSP" and with brand name "MAXTECH" (hereinafter referred to as the said model), manufactured by M/s. Malabar Scales, Garden Complex, Near Govt Hospital, Kodungallur, Thrissur, Pin-680664, Kerala and which is assigned the approval mark IND/09/11/297;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform type) with a maximum capacity of 1000kg. and minimum capacity of 2kg. The verification scale interval (e) is 100g. It has a tare device with a 100 percent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

Figure-1 Model

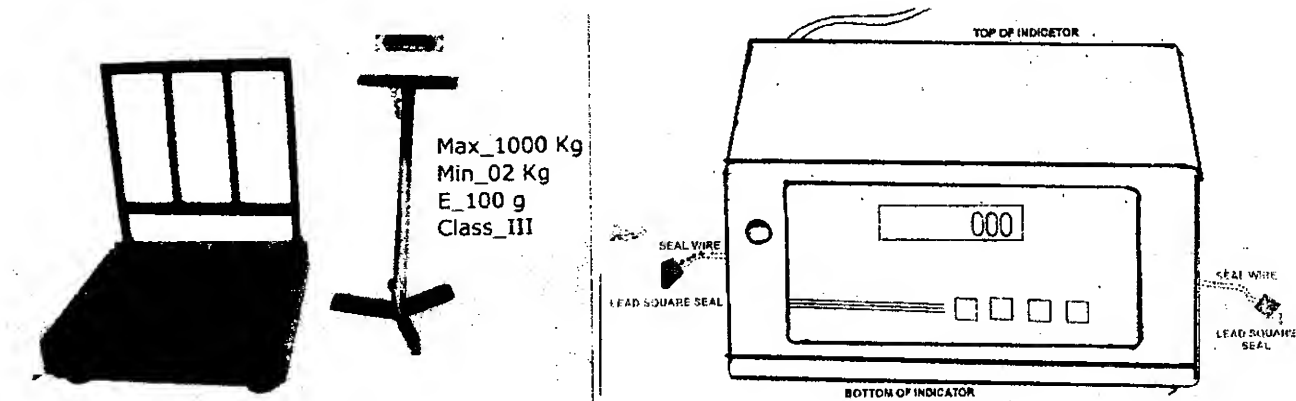


Figure-2 Schematic Diagram of the sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50kg. and up to 5000kg. with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F. No. WM-21 (106)/2011]

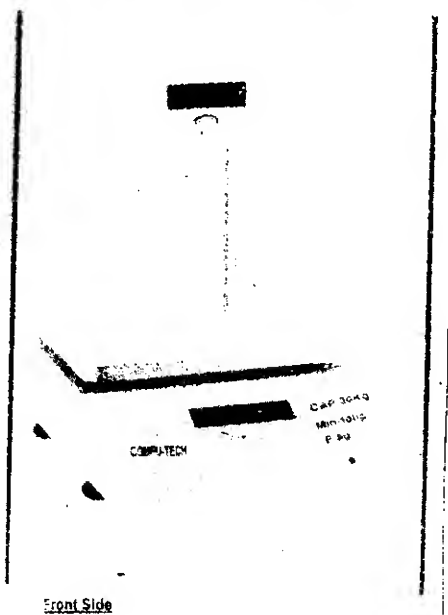
B. N. DIXIT, Director of Legal Metrology

नई दिल्ली, 31 अक्टूबर, 2011

का.आ. 3204.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप हैं और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

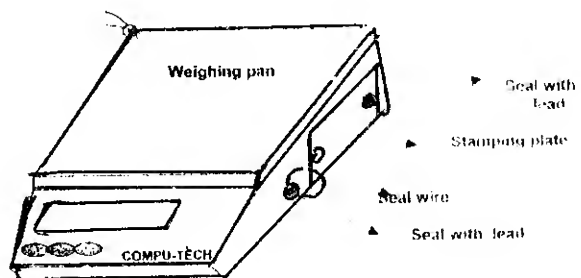
अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स एस एन डिस्ट्रीब्यूटर, उमारपुर (बानीपुर), पी.ओ. घोड़शाला, पी.एस. रघुनाथगंज, मुर्शिदाबाद-742229 (पश्चिम बंगाल) द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "सीटीटी" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबलटाप टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "कम्प्यू-टेक" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/10/521 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबलटाप टाइप) है। इसकी अधिकतम क्षमता 30 कि.ग्रा. और न्यूनतम क्षमता 100 ग्रा. है। सत्यापन मापमान अंतराल (ई) 5 ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत-प्रतिशत व्यवकलात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



Front Side

आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकालकर सीलिंग की गई है। डिस्पले की बेस प्लेट और टॉप कवर के छेद से सील को जोड़ा गया है, तब सील वायर इन दोनों छेदों में से निकालकर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में केलिब्रेशन के लिए बाहरी पहुंच है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करता है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि.ग्रा. से 2 ग्रा. के "ई" मान के लिए 100 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) और 5 ग्रा. से या उससे अधिक "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^*$, $2 \times 10^*$ या $5 \times 10^*$ के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(310)/2010]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 31st October, 2011

S.O. 3204.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of Medium Accuracy (Accuracy class-III) of series "CTT" and with brand name COMPU-TECH (hereinafter referred to as the said model), manufactured by M/s. S. N. Distributor, Umarpur (Banipur), P.O.-Ghorshala, P. S. Raghunathganj, Murshidabad-742229 (W.B.) and which is assigned the approval mark IND/09/10/521;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Table Top type) with a maximum capacity of 30 kg. and minimum capacity of 100 g. The verification scale interval (e) is 5 g. It has a tare device with a 100 percent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

Figure-1 Model

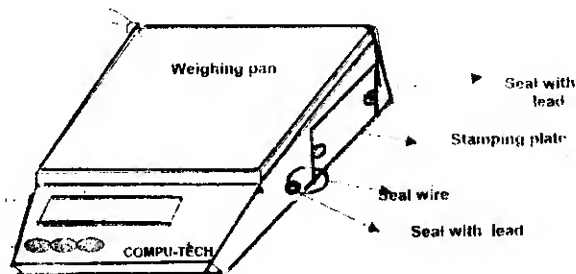
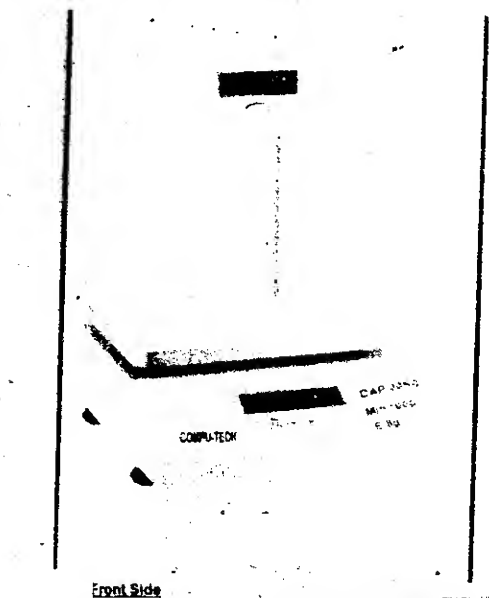


Figure-2 Schematic Diagram of the sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50 kg. with verification scale interval (n) in the range of 100 to 10,000 for 'e' value of 1mg. to 2g. and with verification scale interval (n) in range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F. No. WM-21 (310)/2010]

B. N. DIXIT, Director of Legal Metrology

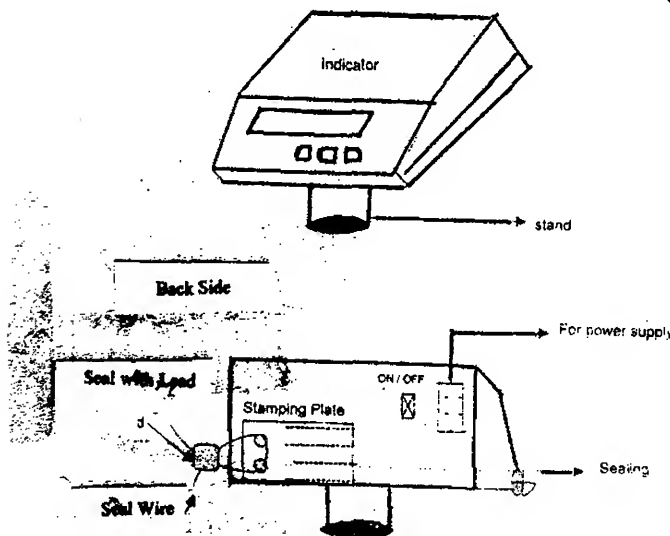
नई दिल्ली, 31 अक्टूबर, 2011

का.आ. 3205.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स एस एन डिस्ट्रीब्यूटर, उमारपुर (बानीपुर), पी.ओ. घोड़शाला, पी.एस. रघुनाथगंज, मुर्शिदाबाद-742229 (पश्चिम बंगाल) द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "सीटीपी" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेट फार्म टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "कम्प्यू-टैक" है; (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/10/522 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेट फार्म प्रकार) है। इसकी अधिकतम क्षमता 500 कि.ग्रा. और न्यूनतम क्षमता 1 ग्रा. है। सत्यापन मापमान अन्तराल (ई) 50 ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत प्रतिशत व्यकलात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकालकर सीलिंग की गई है। डिस्पले के बेस प्लेट और टॉप कवर में बने दो छेदों में से सीलिंग वायर निकालकर सील से जोड़ा गया है। तब सील वायर इन दोनों छेदों में से निकालकर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में केलिब्रेशन के लिए बाहरी पहुंच है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि. ग्रा. से 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^6 , 2×10^6 या 5×10^6 के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

New Delhi, the 31st October, 2011

S.O. 3205.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indication of Medium Accuracy (Accuracy class-III) of series "CTP" and with brand name "COMPU-TECH" (hereinafter referred to as the said model), manufactured by M/s. S. N. Distributor, Umarpur (Banipur), P.O.-Ghorshala, P. S. Raghunathganj, Murshidabad-742229 (W.B.) and which is assigned the approval mark IND/09/10/522;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform type) with a maximum capacity of 500 kg. and minimum capacity of 1kg. The verification scale interval (e) is 50 g. It has a tare device with a 100 percent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

Figure-1 Model

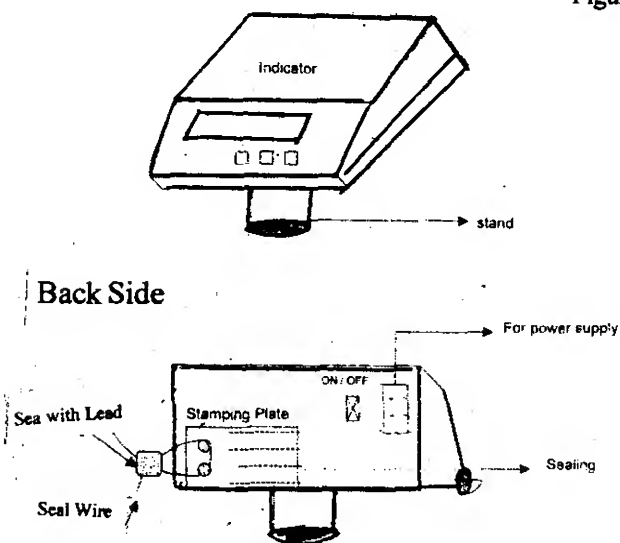


Figure-2 Schematic Diagram of the sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50 kg. and up to 5000 kg. with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. and more with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F.No. WM-21 (310)/2010]

B. N. DIXIT, Director of Legal Metrology

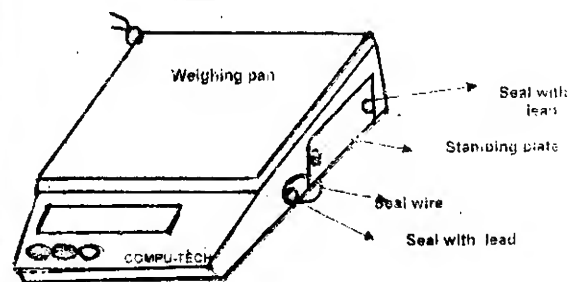
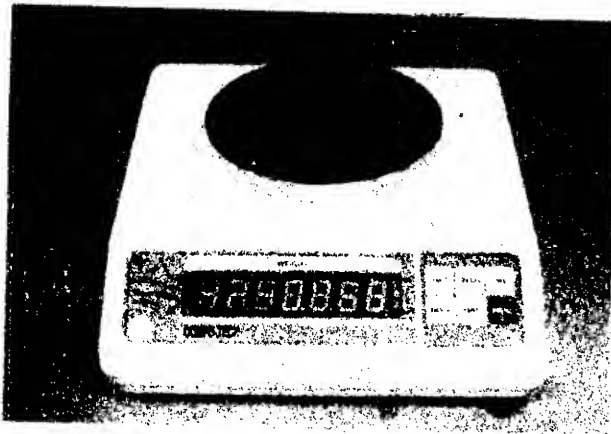
नई दिल्ली, 31 अक्टूबर, 2011

का.आ. 3206.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप हैं और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स एस एन डिस्ट्रीब्यूटर, उमारपुर (बानीपुर), पी.ओ. घोड़शाला, पी.एस. रघुनाथगंज, मुर्शिदाबाद-742229 (पश्चिम बंगाल) द्वारा विनिर्मित उच्च यथार्थता (यथार्थता वर्ग-III) वाले "सीटीजे" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म टाइप) के मॉडल का, जिसके ब्राण्ड का नाम "कम्प्यू-टेक" है, (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिन्ह आई एन डी/09/10/520 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबल टाइप प्रकार) है। इसकी अधिकतम क्षमता 300 ग्रा. और न्यूनतम क्षमता 200 मि. ग्रा. है। सत्यापन मापमान अंतराल (ई) 10 मि. ग्रा. है। इसमें एक आधेयतुलन युक्ति है। जिसका शत प्रतिशत चकत्तात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एलईडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति-1



3206(1)

आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

डिस्पले की बाड़ी में से सीलिंग वायर निकालकर सीलिंग की गई है। डिस्पले की बेस प्लेट और टॉप कवर के छेद से सील को जोड़ा गया है। तब सील वायर इन दोनों छेदों में से निकालकर सील से जोड़ा गया है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

उपकरण में केलिब्रेशन के लिए बाहरी पहुंच है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-नियम (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि. ग्रा. से 50 मि. ग्रा. तक के "ई" मान के लिए 100 से 100,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 100 मि. ग्रा. या उससे अधिक के "ई" मान के लिए 5000 से 100,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान $1 \times 10^*$, $2 \times 10^*$, $5 \times 10^*$, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(310)/2010]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 31st October, 2011

S.O. 3206.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of weights and measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of High Accuracy (Accuracy class-III) of series CTJ and with brand name COMPU-TECH (hereinafter referred to as the said model), manufactured by M/s. S. N. Distributor, Umarpur (Banipur), P.O.-Ghorshala, P. S. Raghunathganj, Murshidabad-742229 (W.B.) and which is assigned the approval mark IND/09/10/520;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Table Top type) with a maximum capacity of 300 g. and minimum capacity of 200 mg. The verification scale interval (e) is 10 mg. It has a tare device with a 100 percent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

Figure-1 Model

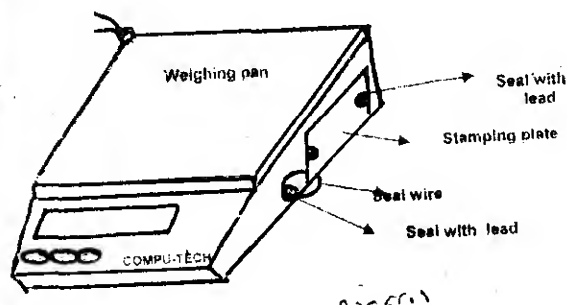


Figure-2 Schematic Diagram of the sealing provision of the model

Sealing is done on the display by passing sealing wire from the body of the display. The seal is connected by whole in base plate and top cover of display, than seal wire is passed through these two holes attached with seal. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50 kg. with verification scale interval (n) in the range of 100 to 100,000 for 'e' value of 1mg. to 50 mg. and with verification scale interval (n) in range of 5000 to 10,000 for 'e' value of 100 mg. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F.No. WM-21 (310)/2010]

B. N. DIXIT, Director of Legal Metrology

भारतीय मानक ब्यूरो

नई दिल्ली, 19 अक्टूबर, 2011

का.आ. 3207.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई. एस. 179 : 2009 वस्त्रादि—सूती दोसूती—विशिष्ट (तीसरा पुनरीक्षण)	—	31-12-2011
2.	आई. एस. 15272 : 2009 वस्त्रादि— कारवां के लिए आच्छादन—सुरक्षा अपेक्षाएं—विशिष्ट (पहला पुनरीक्षण)	—	31-10-2011
3.	आई. एस. 15891 (भाग 1) : 2011 वस्त्रादि—बिना बुने हुए वस्त्रों की परीक्षण विधियां भाग 1 प्रति इकाई क्षेत्रफल की संहति ज्ञात करना	—	31-01-2011
4.	आई. एस. 15891 (भाग 2) : 2011 वस्त्रादि—बिना बुने हुए वस्त्रों की परीक्षण विधियां भाग 2 मोटाई ज्ञात करना	—	31-01-2011

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : टी एक्स डी/जी-25]

अनिल कुमार, प्रमुख एवं वैज्ञानिक 'ई' (टी एक्स डी)

BUREAU OF INDIAN STANDARDS

New Delhi, the 19th October, 2011

S.O. 3207.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards particulars of which are given in the Schedule hereto annexed have been established on the date indicated against it :—

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 179 : 2009 Textiles—Cotton Dosuti—Specification (Third Revision)	Nil	31st December, 2009
2.	IS 15272 : 2009/ISO 8936 : 2003 Textiles—Caravan Awnings-Safety Requirements—Specification (First Revision)	Nil	31st October, 2009
3.	IS 15891 (Part 1) : 2011/ISO 9073-1 : 1989 Textiles-Test Methods for Non-Wovens Part 1 Determination of Mass Per Unit Area	Nil	31st January, 2011
4.	IS 15891 (Part 2) : 2011/ISO 9073-2 : 1995 Textiles-Test Methods for Non-Wovens Part 2 Determination of Thickness	Nil	31st January, 2011

Henceforth, these standards will be available for sale.

Copy of these Standards are available for sale with HQ at Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices at New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices at Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: TXD/G-25]

ANIL KUMAR, Sc. 'E' & Head (Textiles)

नई दिल्ली, 20 अक्टूबर, 2011

का.आ. 3208.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई. एस 15891 (भाग 3) : 2011 वस्त्रादि-बिना बुने हुए वस्त्रों की परीक्षण विधियां भाग 3 तनन सामर्थ्य और दीघीकरण ज्ञात करना	-	31-06-2011
2.	आई. एस 15891 (भाग 4) : 2011 वस्त्रादि-बिना बुने हुए वस्त्रों की परीक्षण विधियां भाग 4 विदारण प्रतिरोध ज्ञात करना	-	31-06-2011

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : टी एक्स डी/जी-25]

अनिल कुमार, प्रमुख एवं वैज्ञानिक 'ई' (टी एक्स डी)

New Delhi, the 20th October, 2011

S.O. 3208.—In pursuance of clause (b) of sub-rule (1) Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards particulars of which are given in the Schedule hereto annexed have been established on the date indicated against it :—

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 15891 (Part 3) : 2011/ISO 9073-1 : 1989 Textiles—Test Methods for Non-Wovens Part 3 Determination of Tensile Strength and Elongation	Nil	June, 2011
2.	IS 15891 (Part 4) : 2011/ISO 9073-2 : 1995 Textiles—Test Methods for Non-Wovens Part 4 Determination of Tear Resistance	Nil	June, 2011

Henceforth, these standards will be available for sale.

Copy of these Standards are available for sale with HQ at Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices at New Delhi, Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices at Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. : TXD/G-25]

ANIL KUMAR, Sc. 'E' & Head (Textiles)

नई दिल्ली, 24 अक्टूबर, 2011

का.आ. 3209.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई. एस. 13252 (भाग 1) : 2010/आई ई सी 60950-1 : 2005 सूचना प्रौद्योगिकी उपस्कर—सुरक्षा भाग 1 सामान्य अपेक्षाएं (दूसरा पुनरीक्षण)	—	जुलाई, 2010
2.	आई. एस. 15040 : 2010/सिस्पर 25 : 2008 आन्तरिक दहन इंजन, नावों व बोर्ड वाहनों में उपयोगी रीसीवरों के संरक्षण के लिये रेडियो व्यवधान लक्षण की मापन पद्धतियां एवं सीमाएं (पहला पुनरीक्षण)	—	दिसम्बर, 2010
3.	आई. एस./आई ई सी 61196-1-100 : 2005 समाक्ष संचार केबल भाग 1-100 इलेक्ट्रिकल परीक्षण विधि सामान्य आवश्यकताएं	—	जून, 2011
4.	आई. एस./आई ई सी 61196-1-101 : 2005 समक्ष संचार केबल भाग 1-101 इलेक्ट्रिकल परीक्षण विधि—परीक्षण चालक के लिये डी.सी. प्रतिरोध की कोश	—	जून, 2011

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एल आई टी डी/जी-75]

नरेन्द्र सिंह, प्रमुख (इलेक्ट्रॉनिकी एवं आई टी)

New Delhi, the 24th October, 2011

S.O. 3209.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards particulars of which are given in the Schedule hereto annexed have been established on the date indicated against it :—

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 13252 (Part 1) : 2010/IEC 60950-1 : 2010 Information technology equipment—safety part 1 general requirement (Second Revision)	Nil	July, 2010

(1)	(2)	(3)	(4)
2.	IS 15040 : 2010/CISPR 25 : 2008 Radio disturbance characteristics for protection of receivers used on board vehicles, boats and internal combustion engines-limits and methods of measurement (First Revision)	Nil	December, 2010
3.	IS/IEC 61196-1-100 (2005) Coaxial communication cables-Part 1-100 : electrical test methods—General requirements	Nil	June, 2011
4.	IS/IEC 61196-1-101 (2005) Coaxial communication cables-Part 1-101 : electrical test methods—Test for conductor d.c. resistance of cable	Nil	June, 2011

Copy of this Standards is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices at New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. : LITD/G-75]

NARENDRA SINGH, Head (Electronics & IT)

नई दिल्ली, 24 अक्टूबर, 2011

का.आ. 3210.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसारण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
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(1)	(2)	(3)	(4)
1.	आई एस 878 : 2008/आईएसओ 4788 : 2005 प्रयोगशाला हेतु ग्लासवेयर—अंशांकित मापन सिलिंडर (दूसरा पुनरीक्षण)	—	30 अप्रैल, 2011

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

दिनांक : 24-10-2011

[संदर्भ : सीएचडी 10/आईएस 878/आईएसओ 4788]

ई. देवेन्द्र, वैज्ञानिक 'एफ' एवं प्रमुख (रसायन)

New Delhi, the 24th October, 2011

S.O. 3210.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 878 : 1975 : 2008/ISO 4788 : 2005 Laboratory Glassware—Graduated Measuring Cylinders (Second Revision)	—	30 April, 2011

Copy of this Standards is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices at New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and

also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

Dt. 24-10-2011

[Ref. : CHD 10/IS 878/ISO 4788]

E. DEVENDAR, Scientist 'F' & Head (Chemical)

नई दिल्ली, 31 अक्टूबर, 2011

का.आ. 3211.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) संशोधन(नों) की संख्या, वर्ष और शीर्षक	भारत के राजपत्र भाग 2, खंड 3, उप-खंड (ii) में का.आ. संख्या और तिथि प्रकाशित	टिप्पणी
(1)	(2)	(3)	(4)
1.	संशोधन संख्या 1 आई एस 1350 (भाग 4/वर्ग 1) : 1974 कोयले एवं कोक की उत्पादों की परीक्षण पद्धतियाँ : भाग 4 सर्वश्रेष्ठ विश्लेषण : वर्ग 1 कार्बन और हाइड्रोजन ज्ञात करना (पहला पुनरीक्षण)	कुछ नहीं	अक्टूबर, 2011

इस भारतीय मानक के संशोधन की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

तिथि : 31 अक्टूबर, 2011

[संदर्भ : पीसीडी/जी-7 (गजट)]

डा. (श्रीमती) विजय मलिक, वैज्ञ. 'एफ' एवं प्रमुख (पी.सी.डी.)

New Delhi, the 31st October, 2011

S. O. 3211.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards Amendment, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. & Year title of the Indian Standards Amendment Established	No. & year of Indian Standard, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1	Amendment No. 1 to IS 1350 (Part 4/Section 1) 1974 Methods of test for coal and coke : Part 4 Ultimate analysis : Section 1 Determination of carbon and hydrogen (First Revision)	None	October, 2011

Copies of this Standards amendment are available for sale with the at Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai, and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

Dt. 31-10-2011

[Ref. : PCD/G-7 (Gazette)]

Dr. (Mrs.) VIJAY MALIK, Sc. 'F' & Head (PCD)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 4 अक्टूबर, 2011

का.आ. 3212.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रायोग करते हुए एतद्वारा में अनुसूची में विनिर्दिष्ट कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिसूचना के जारी किए जाने की तारीख से एक वर्ष की अवधि के लिए छूट प्रदान करती है।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात् :-

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थी;
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;
- (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
- (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
- (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या
- (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम

के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :—

- (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा
- (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
- (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
- (ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

अनुसूची

क्रम संख्या	स्थापना/कारखाने का नाम
1.	सेमी कंडक्टर लेबोरेट्री, मोहाली (पंजाब)
2.	केन्द्रीय टूल रूम, लुधियाना
3.	प्रक्रिया व उत्पाद विकास केन्द्र, मेरठ

[सं. एस-38014/13/2011-एसएस-1]

नरेश जायसवाल, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 4th October, 2011

S.O. 3212.—In exercise of the power conferred by section 88 read with section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories/establishments specified in the schedule from the operation of the said Act. The exemption shall be effective from the date of issue of this Notification for a period of one year.

2. The above exemption is subject to the following conditions namely:—

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees;
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under sub-section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of:—
 - (i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or
 - (ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any

reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or
- (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
- (e) exercise such other powers as may be prescribed.

6. In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

SCHEDULE

Sl. No.	Name of the Establishment/Factory
1.	Semi Conductor Laboratory, Mohali (Punjab).
2.	Central Tool Room, Ludhiana.
3.	Process-cum-Product Development Centre, Meerut.

[No. S-38014/13/2011-SS-I]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 10 अक्टूबर, 2011

का.आ. 3213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स इण्डियन आयल कार्पोरेशन लिमिटेड मार्केटिंग डिविजन जयपुर के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 3, 9, 15, 16, 28, 32, 34/2008 एवम् 4/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2011 को प्राप्त हुआ था।

[सं. एल-30012/3, 9, 15, 16, 28, 32, 34/2008-आईआर (एम) एवम्

सं. एल-30012/53/2003-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2011

S.O. 3213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3, 9, 15,

16, 28, 32, 34/2008 & 4/2009) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd. (Marketing Division) Jaipur and their workman, which was received by the Central Government on 10-10-2011.

[F. No. L-30012/3, 9, 15, 16, 28, 32, 34/2008-IR (M) & No. L-30012/53/2003-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

PRESENT : N.K. PUROHIT, Presiding Officer

Case No.: 9/2008

Reference No. L-30012/6/2008-IR(M)

Sunderlal Yadav
S/o Sh. Lallulal Yadav
R/o Plot No.10, Shiv Colony,
Ajmer Road, Sodala, Jaipur

... Claimant

V/s

The General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar,
Jaipur.

... Non-Applicant

Case No.: 3/2008

Reference No. L-30012/3/2008-IR(M)

Narender Singh
S/o Sh. Kalyandan
R/o Kali Pahadi, Charanvas Via Achrol,
Jaipur

... Claimant

V/s

The General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar,
Jaipur.

... Non-Applicant

Case No.: 15/2008

Reference No. L-30012/10/2008-IR(M)

Sh. Vinod Kr. Kumawat
S/o Sh. Bhanwarlal Kumawat
R/o C-58, Dundlod House,
22 Godowon,
Jaipur.

... Claimant

V/s

The General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar,
Jaipur.

... Non-Applicant

Case No.: 16/2008

Reference No. L-30012/11/2008-IR(M)

Sh. Ramswaroop Bagoria
S/o Sh. Shivkaran Bagoria
R/o Khatikon Ka Mohalla
Ward No.26, Badanpura,
Jaipur.

... Claimant

V/s

The General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar,
Jaipur.

... Non-Applicant

Case No.: 28/2008

Reference No. L-30012/4/2008-IR(M)

Sh. Devi Sahai Jangid
S/o Sh. Hanuman Sahai Jangid
R/o Kali Pahadi, Charanvas Via Achrol,
Jaipur.

... Claimant

V/s

The General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar,
Jaipur.

... Non-Applicant

Case No.: 32/2008

Reference No. L-30012/7/2008-IR(M)

Sh. Suresh Saini
S/o Sh. Harnarayan Saini
R/o E-30, Govindpuri, Sodala,
Jaipur.

... Claimant

V/s

The General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar,
Jaipur.

... Non-Applicant

Case No.: 34/2008**Reference No. L-30012/53/2003-IR(M)**

Sh. Shankarlal Sharma
S/o Sh. Bhagwan Sahai Sharma
R/o Boharo Ki Dhani
Post Morija Via Chomu,
Jaipur.

... Claimant

V/s

The Senior Manager, (P&A)
IOCL,
Rajasthan State Office
Ashok Chowk, Adarsh Nagar,
Jaipur.

... Non-Applicant

Case No.: 4/2009**Reference No. L-30012/23/2009-IR(M)**

Sh. Rameshwar Prasad
S/o Sh. Tejaram Raiger
R/o Post Achrol, Tehsil Amer,
Thana Chandwaji,
Jaipur.

... Claimant

V/s

The General Manager,
IOCL, Rajasthan State Office
Ashok Chowk, Adarsh Nagar,
Jaipur.

... Non-Applicant

Present :

For the claimants : Sh. Kunal Rawat

For the Non-Applicant : Sh. B.S.Ratnu

AWARD

23-8-2011

1. These aforementioned references have been referred for adjudication to this tribunal by the Central Government in exercise of the powers conferred in clause D of sub-section 1 & 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which involve almost identical facts & question of law & are agitated against the same establishment i.e. Indian Oil Corporation Ltd. which are being disposed of vide this common Award.

2. The disputes referred to this tribunal relates to the validity of the action of the management of Indian Oil Corporation Ltd., Jaipur through General Manager in discontinuing the services of the claimants w.e.f. respective dates mentioned in the reference.

3. As per averments made by the claimants in their identical claim statements the IOCL recruited them as workmen & posted them at Coco Petrol Pump at Khasa Khoti Circle, Jaipur. They worked there as workmen continuously for more than 240 days but their services

were terminated without any notice or compensation in lieu of notice in violation of provision of Section 25-F of the Act. It has been alleged that after their termination the Corporation has recruited the fresh hands in violation of Section 25-H of the Act. It has further been alleged that they were employed as workman but to deprive them of the advantage of provisions of I.D. Act, they were designated as 'Trainee'. Thus, they have prayed that their termination order be declared as unjust & void respectively & they be reinstated in the services with back wages & other consequential benefits.

4. The Corporation in its reply to the statement of claim stated that since claimants were just trainees no relationship of employer & employee ever existed between the parties & the claimants were only trainees & were kept on training under a training scheme. It is also contended that being a Government of India undertaking the Corporation started the said scheme oriented training program to impart training how to operate petrol pumps. The training period of the claimants was for a stipulated period & it was made clear to them that they shall not be absorbed on completion of the training program. It is further pleaded that the certificates of their training were issued in their favour to enable them to get the employment on petrol pumps & they had accepted the terms & condition of the training prior to the execution of the undertaking by them. The Corporation has further alleged that the claimants are not the workmen as defined u/s 2-S of the Act & on completion of training period by efflux of time their termination cannot be termed as retrenchment falling under Section 2(oo) of the Act as the cases of the claimants fall u/s 2(oo)(bb) of the Act.

5. In the rejoinder, the claimants have reiterated their earlier averments made by them in their respective claim statements.

6. In view of the averments made by both the sides the following points crop-up for consideration:-

- i. Whether the claimants were employed by the corporation & they had worked for more than 240 days during preceding twelve months from the respective date of their alleged termination & whose services were terminated in violation of Section 25-F of the I.D. Act?
- ii. Whether after termination of the claimants fresh hands were recruited by the Corporation in violation of Section 25-H of the Act?
- iii. Whether the claimants fall in the category of workmen u/s 2-8 of the I.D. Act?

7. In evidence, the claimants submitted their individual affidavits with almost similar contents. In rebuttal, the counter affidavits of management witnesses Sh. Sunil Gupta, Chief Manager (Marketing) (case no. 3/08, 9/08, 15/08, 16/08, 28/08, 32/08, 34/08, 4/09), Sh. R.D. Gupta, Deputy Manager (P&A) (case no. 16/08, 32/08, 34/08), Sh. K.L. Chaturvedi, Manager (Terminal) (case

no. 3/08, 9/08, 15/08, 28/08, 4/09) have been placed on record in respective cases.

8. The claimants have adduced documentary evidence Ex- W-1 to Ex-W-4 whereas the Corporation has produced documents Ex-M-1 to M-6 on record in support of their respective cases.

9. Heard both the parties & perused the relevant record. The point wise discussion follow as under:-

Point No.1 & 3

10. Since the facts involved in both the points are common, they are being discussed together.

11. The learned representative for the claimants contend that the claimants have worked for more than 240 days in a calendar year at the petrol pump at Khasa Khoti Circle, Jaipur under the supervision & control of the Corporation; that their names were not sponsored for training; that the Corporation was earning through their employment; that the Corporation earns money from the customers by sell of products; that there was no training institute for imparting training to them. The learned representative further contends that the claimants were working eight hours per day & their job was of perennial nature & the claimants fall in the category of the workmen as defined u/s 2-S of the Act. The learned representative also contends that despite the claimants had worked regularly for more than 240 days their services were terminated in violation of Section 25-F of the Act. The learned representative for the claimants furthermore contends that it has been admitted by the management witnesses that there was neither syllabus for training nor any trainer or training institute. The contributions towards ESI, PF by the claimants show that they were not trainees. It has been alleged that the claimants were employed as workmen but to deprive them of their advantages of the benefits of their posts they were designated as trainees. Thus, the action of the Corporation is illegal, unjust & against public policy & also an unfair labour practice resorted by the Corporation. The learned representative on behalf of the claimants also contends that in the identical matter, award has been passed by this Tribunal in favour of the workmen therein.

12. Per contra, the learned representative on behalf of the Corporation submitted that the claimants were engaged under an employment scheme sponsored by the corporation for imparting training to assist the unemployed youth for better prospect for employment anywhere after completion of training. They were appointed as trainees who were paid monthly stipend and they were posted on retail outlets. The training was for a fixed term of 11 months and stipend of Rs. 1164 per month was payable. The corporation for the scheme sought the list of the names of the workmen from the employment exchange & who found suitable were given the training and their terms of employment expired with the efflux of time. The above mentioned said scheme was framed in terms of 25 points

program of the Central Government. He further submitted that as per the terms & conditions mentioned in the letter of training & undertaking given by the claimants they were well aware that they were trainees for a fixed period & after completion of training they will be automatically discharged. The corporation did not give any guarantee that the trainees would be absorbed as an employee. They were relived after completion of the training & their removal doesn't amount to retrenchment as per Section 2(oo) (bb) of the Act. The learned representative further submitted that the claimants were never appointed as workmen & no employer-employee relation existed. The work was performed by them as trainee. Thus, they are not workman as defined u/s 2-(s) of the Act. Further, List of payment of bonus also does not support the contention of the claimants because bonus was not paid as employees. It was paid only on humanitarian grounds. It is mentioned in the list itself that bonus was to be paid to the trainees. Thus, the documents on record do not substantiate the contention on behalf of the workmen. Furthermore submitted that question such as unfair labour practice or acting against public policy cannot be agitated being not part of reference.

13. I have given my thoughtful consideration on the rival submissions of both the sides & have scanned the relevant record.

14. The case of the claimants is that they were engaged as regular employee & were performing the job of perennial nature. The Corporation has resorted unfair labour practice by making pretext of training to deprive the workmen from the benefits available under the I.D. Act where as the main thrust on behalf of the corporation is that they were performing the said work as trainees on certain terms & conditions for a fix term & after expiry of the stipulated period their appointment came to an automatic end.

15. It has been contended on behalf of the Corporation that the tribunal cannot go beyond the point referred to in the reference. Therefore, any question such as unfair labour practice or acting against public policy cannot be agitated or adjudicated upon being not part of the reference or being beyond the terms of the reference on the basis of which the tribunal gets jurisdiction to adjudicate on the matter. In this regard learned representative on behalf of the management has relied on 2008(1)LLJ 465(Gawahati).

16. In decision supra the terms of reference was whether the management was justified in denying the workman from carpenters work & withdrawing the daily extra payment which was allowed so long. The workman who was demoted refused to do any other work. The labour court ordered restoration of post & awarded back wages including extra pay. In above facts & circumstances, it was held that the tribunal erred by travelling beyond scope of the reference. The facts of the above decision are distinguishable.

17. As per Section 10(4) of the I.D. Act the tribunal can adjudicate on those points which appropriate Government has specified in the reference matter and the matter incidental thereto. In present reference under adjudication the question under consideration is whether the alleged action of the management in termination of services of the workmen in respective cases is justified and illegal? While considering this question it can be seen whether the employer has acted bonafidely. Colorable exercise of the power under the contract or in case of unfair labour practice, a tribunal has jurisdiction to interfere. It can examine the substance of the matter and determine the real nature of the employment despite the veil of trainees covering the face of the contract and can see whether action of disengagement of the workmen under the garb of training scheme was justified and legal.

18. In JT 2004(8) SCC 272 referred by the learned representative on behalf of the workmen, Hon'ble Apex Court has observed as follows:-

"Whether a relation of an employer and a workman or an employee or an apprenticeship had been brought about is essentially question of fact. The court while determining such a dispute must consider factual matrix entrusted therein in the light of the provisions of the said Act. Once it is held that a contract or apprenticeship enter into by and between by the employer or a workman is genuine one and not a camouflage or a ruse, a presumption would be arise that the concerned person is not a workman."

19. In view of the principles propounded in the aforementioned decision if it is found that a contract of apprenticeship/training is not genuine one and it is a camouflage or a ruse a presumption would arise that the person concerned is not a trainee. Thus, it can be seen whether the offer of appointment as trainee to the disputants is a sham contract or innocuous contract.

20. The letter containing the offer of appointment Ex-M-addressed to the claimants respectively states that there training shall be for a period of 11 months; that during training stipend worth Rs. 1164 will be paid; that the training period there shall not be any employer and employee relationship between the parties; that on completion of the training the Indian Oil Corporation shall not absorb them however, on successful completion of the training period a certificate to that effect will be issued.

21. Ex-M-3 is an undertaking designed as the "Title of the Scheme" whereby the claimants have agreed to be governed by the scheme in terms of the letter for offer of appointment. Ex-M-4 is a letter written by the non-applicant corporation to the employment exchange for sending a list of candidates for training purely on temporary basis. Ex-M-5 is a letter from the employment exchange along with the list of eligible candidates for training and Ex-M-6 is a payment sheet of stipend.

22. The Claimants Sh. Narender, Sh. Rameshwar, Sh. Sunderlal, Sh. Vinod Kumar, Sh. Ramswaroop, Sh. Devi Sahai, Sh. Suresh and Sh. Shankar have submitted their individual affidavits in support of their respective cases. Except the period during which the work was performed by them the remaining contents of the affidavits of the claimants are similar. The contents of the cross-examination on the said affidavits are also similar. The claimants have admitted that they had received the letter containing offer of appointment mentioning the terms and condition of the scheme of training and after receiving the same they joined their duty on coco petrol pump. They have also admitted that the undertakings whereby the claimants have agreed to be governed by the scheme in terms of the letter of offer of appointment were signed by them respectively. They have also admitted their names are mentioned in the list forwarded by the employment exchange vide letter dated 4-9-2001(Ex-M-5). But they have denied that the sheet pertaining to payments of stipends bear their signature.

23. The claimants have stated in their affidavits that they were not engaged as trainees and no training was ever imparted to them. In their cross-examination they have stated that they were engaged for delivering of petrol in the customers, vehicle and have denied that consolidated wages were paid to them in the capacity of trainees. Although they have admitted that prior to their engagement they had not handle the job of delivering petrol into the vehicle. Thus, the claimants have categorically denied that they were appointed as trainees and have stated that they were performing the regular work.

24. Contrary to it, the management witness Sh. Sunil Gupta in his affidavit denied the claim of the workmen and has reiterated the averments in the reply to the claim statement. He has stated that the claimants had worked performed the work at coco petrol pump during period mentioned in respective reply but he has stated that the work was performed by them as trainee not as workman. He has admitted that since there was no syllabus for training therefore, no such syllabus has been produced. He has stated that the claimants used to supply the petrol in the vehicles which was part of their training. He has stated that advertisements regarding vacancies of salesmen at coco petrol pump at M.I. Road in Dainik Bhaskar newspaper dated 27-9-07 was not published by the corporation. The contents of the affidavits and cross-examination of the said witness in respective cases are almost similar.

25. It is pertinent to mention that the affidavits of management witness Sh. K.L. Chaturvedi have been produced in respective cases i.e. case no. 3/08, 9/08, 15/08, 28/08 and 4/09 whereas affidavits of management witness Sh. R.D. Gupta have been produced in remaining cases i.e. case no. 16/08, 32/08 and 34/08. The above witnesses have been produced to prove their signature on respective documents i.e. letters pertaining to offer of appointment

and letter written to the employment officer for sending list of eligible candidates for recruitment of apprenticeship trainees. They have denied that signature of the claimants were obtained on blank papers on their respective undertakings. In cross-examination they have stated that had the claimants not agreed on the terms & conditions of the letter of offer, training would not have been imparted to them.

26. Learned representative for the corporation has submitted that from the documentary and oral evidence of the management brought on record, it is evident that in fact the claimants were engaged as trainees for employment oriented training and no employer employee relation existed and they were not covered u/s 2-(s) of the I.D. Act. Whereas the learned representative for the workmen urged that the workmen were not engaged as trainee & no training was imparted to them. Further even an apprentice is a workman under Section 2-(s) of the I.D. Act.

27. Under Section 2-(s) the workman has been defined & definition include a person employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward. It also includes an apprentice. It only excludes person from the purview of the definition mentioned in sub-clause (I) to (IV).

28. In order to be a workman within Section 2-S of the Act a person must be working in one or the other capacities mentioned in the definition clause. In present matter it is evident from the record that the claimants said to be appointed as trainees were doing perennial work contemplated in the definition of the workman u/s 2-S of the I.D. Act and their case does not come within any exception mentioned in sub clause I to IV of the said section and as per definition of workman under said section they are workmen. Thus, the contention of the learned representative for the management in this regard is not sustainable.

29. The next contention of the learned representative for the management was that the workmen were engaged as trainees for a fixed period of 11 months and as soon as the period of 11 months came to an end, they were discharged. As per the terms of agreement, undertaking and other documents on record, it is clear that under Section 2(oo)(bb) of the I.D. Act if there is contract for a fixed period and the same came to an end after the expiry of the stipulated period then there is no retrenchment in the eye of law. In support of his contention reliance has been placed on 2006 I LLJ p-12(SC)& 2006 I LLJ 685(SC).

30. I have gone through above decisions referred to by the learned representative for the management. In decision 2006 I LLJ 12(SC) the facts thereof are that the workman was appointed by the employer on regular basis against the regular post & was being paid Rs.1200 p.m. but his services were illegally terminated by the employer

without any notice, notice pay & retrenchment compensation. The stand of the employer was that the workman was engaged on casual basis on daily wages for specific period & for specific work. He was never issued any appointment order in respect of any regular post. Hon'ble Apex Court held that both the labour court & the High Court fell in grave error by acting on factually & legally erroneous premises. The definite stand of the appellant was that the workman was engaged on casual basis on daily wages for specific work & for specific period. Thus, termination of his service was not retrenchment as per Section 2 (oo)(bb) of the I.D. Act. Details in this regard were indisputably filed. Therefore, Hon'ble Court held that provisions of Section 2(oo)(bb) of the Act are clearly applicable.

31. In 2006 I LLJ 685(SC) Appellant was appointed by the respondent as Junior Typist on N.M.R. basis for a specific period & was engaged again & again on daily wage basis for a specific period. When no extension was given, he raised a dispute which was referred to the labour court. The labour court held the termination illegal for non-compliance of the Section 25-F of I.D. Act. The High Court set aside the labour court's award. Hon'ble Apex court held that in all the orders of engagement of the workman specific periods have been mentioned, cesser of his service on expiring of said period was not retrenchment.

32. In aforesaid decisions turn on its own facts which are quite dissimilar from the present controversy & learned representative does not derive any assistance from both these decisions.

33. As per section 2(oo) terminations by the employer of a workman for any reason whatsoever constitute retrenchment except cases specified in the exception provided in the section itself. Clause (bb) of Section 2(oo) says that retrenchment does not include termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer & the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contemplated therein.

34. Clause(bb) of Section 2(oo) contemplates to cover a more general class of contracts where a regular contract of an employment is entered into and the termination of the service is because of non-renewal of the contract. A non-renewal of contract pre supposes an existing contract of employment which is not renewed. Engagement of a workman for specific period & specified work or seasonal work fall within the ambit of provision of Section 2(oo)(bb) but the said provisions are not applicable where such a contract in reality a camouflage & pretext of training is adopted so as to avoid rigor of the Act.

35. In AIR 2003 SC 3329 submitted by the learned representative for the workmen the core question before the Industrial Court as well as the High Court was whether

the persons whose engagement was terminated were the employees within the meaning u/s 2-S of the I.D. Act. The Industrial Court upheld the plea of the management that they were trainees. In recording the conclusion that they were trainees the Industrial Court adverted to two factors. (1) Neither the complainant union nor the management had placed on record the appointment letters that would have been issued when the concerned persons were recruited in 1988. (2) On the complainant union's own showing the management, started issuing appointment letters appointing them as trainees only after 30-6-89 which itself would negative the case of the union that they were employed as labourers. The case of the management was that the disputants were trainees only & their traineeship was terminated by the management. The question came up for consideration before the Apex Court was whether the disputants were the employee within the meaning of Section 2-S of the I.D. Act. Hon'ble Apex Court held that the conclusions drawn by the labour court were perverse. The fact that no appointment letter were issued or filed does not possibly lead to the conclusion that the management version must be true. Similarly if the worker's union had taken the stand that anti-dated appointment letters were issued describing the employees as trainees after the dispute has arisen it is difficult to comprehend how that would demolish the case of the union that the concerned persons were really employed as workmen (helpers) & not as trainees. The Hon'ble Apex Court has further observed as under:—

“According to the Industrial Court, the fact that the ‘trainees’ were employed for performing the regular nature of work would not by itself make them workmen. The question then is, would it lead to an inference that they were trainees? The answer must be clearly in the negative. No evidence whatsoever was adduced on behalf of the management to show that for more than one and half years those persons remained as ‘trainees’ in the true sense of the term. It is pertinent to note the statement of the managements’ witness that in June-July, 1989, the Company did not have any permanent workmen and all the persons employed were trainees. It would be impossible to believe that the entire production activity was being carried on with none other than the so-called trainees. If there were trainees, there should have been trainers too. The management evidently came forward with a false plea dubbing the employees/workmen as trainees so as to resort to summary termination and deny the legitimate benefits. On the facts and evidence brought on record, the conclusion was inescapable that the appellant-employer resorted to unfair labour practice.

There would have been travesty of justice if the High Court declined to interfere with the findings arbitrarily and without reasonable basis reached by the Industrial Court.”

36. In the said decision it was considered by the Hon'ble Court that if the disputants were trainee there, there should have been trainer too. The case of the management was also disbelieved on the ground that it did not have any permanent workmen. In view of the legal proposition laid down in the decision supra the status of trainee cannot be decided merely on basis of the person wearing the mask of an apprentice or trainee and on the basis of apprenticeship contract or label which a person wears.

37. The facts of the referred decisions are squarely applicable to the present controversy and it fortifies the submission made on behalf of the workmen.

38. In the present matter from the evidence brought on record by the management it has failed to show that the corporation had any training institute or even a trainer to impart the training to the disputants in the field. It is also evident from the record that the work performed by them was perennial in nature and it even exists after their disengagement. It further reveals that corporation had exercised the control and supervision over them. As per terms and conditions for the engagement the objective of training was to provide basic field training in work related to delivery of petrol/diesel/lubricants in customer's vehicle, lubrication of customer's vehicle and customer's service. In view of the nature of job required to be performed by the claimants it is not believable that training for such a long period of 11 months was required. The terms and conditions envisage that both theoretical and practical training was to be imparted to trainees and tests were to be conducted from time to time and minimum marks to be obtained for passing the tests but there is neither pleading nor any management evidence that there was faculty for such theoretical and practical training and tests were conducted for assessment of the performance of the claimants. The management witnesses have stated that had the claimants not agreed to the terms and conditions they would not have been allowed for training. Admittedly, undertakings bear signatures of the claimants but they were in a position in which they could obtain service or means of livelihood only upon terms and conditions imposed by the stronger party i.e. the Corporation or go without them. Thus, delving deep into the matter, it reveals that the appointment order/contract Ex. M-1 was a veil and under the disguise to the party to the claimants their services were hired by the Corporation on payment of monthly consolidated wages for performing its regular work

at the petrol pump which still exists today. It leads to conclusion that their appointment/contract is a sham one and it was a device to escape the applicability of the provisions of I.D.Act. Thus, the case is not covered by clause (bb) of the Section 2(oo) of the Act. The plea set for on behalf of the corporation that the claimants were appointed as trainees and their appointment came to an automatic end on the expiry of the period of appointment, cannot be maintained.

39. Now, the crucial question which left for consideration is whether the claimants had worked for at least 240 days during preceding 12 months from the alleged date of termination.

40. To attract the provisions of Section 25-F of I.D.Act one of the condition required is that the workman is employed in any industry for a continuous period which would not be less than one year.

41. It is not the case of the above claimants that they were in continuous service of the non-applicant for one year within the meaning of Section (1) of Section 25(B) of the I.D. Act. Thus, it is to be seen whether the case of the claimants falls under sub-section 2 of Section 25(B) which says that even if a workman has not been in continuous service for a period of one year as envisaged under sub-section (1) of 25(B) of I.D. Act, he shall be deemed to have been in such continuous service for a period of one year if he has actually worked under the employer for 240 days in preceding period of twelve months from the date of his termination. The said sub-section provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year. In 1981 Lab IC 806 Hon'ble Apex Court has elaborated the mode to invoke the said fiction as follows :—

“In order to invoke the fiction enacted in sub-s(2)(a), it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of a ‘retrenchment’. After that date is ascertained, move backward to a period of 12 months, just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman, pursuant to the deeming fiction enacted in sub-s 2(a), it will have to be assumed that the workman is in continuous service for a period of one year, and he will satisfy the eligibility qualification enacted in Section 25F.”

42. In the background of the legal principles set out above factual scenario is to be examined.

43. In present matter, the following chart indicates the dates of appointment, the dates of termination, period during which the workmen have worked as per pleadings in the claim statement, reply to the claim statement,

reference and statement of the claimants in respective cases.

Case no.	Name of claimant	Date of termination as per reference	As per claim Statement	As per Reply to claim statement	As per affidavit of claimants
3/08	Narender Singh	3-5-05	13-7-01 to 3-4-05	to 3-7-01 to 2-6-02	to 3-7-01 to 2-4-05
9/08	Sunder Lal	24-5-02	26-6-01 to 24-5-02	to 25-6-01 to 24-5-02	to 26-6-01 to 23-5-02
15/08	Vinod Kumar	12-5-02	25-6-01 to 12-5-02	to 25-6-01 to 24-5-02	to 25-6-01 to 11-5-02
16/08	Ramswaroop Badoria	25-5-01	26-6-00 to 25-5-01	to 26-6-00 to 25-5-01	to 26-6-00 to 25-5-01
28/08	Devi Sahai Jangid	1-5-05	22-11-01 to 1-5-05	to 22-11-01 to 21-10-02	to 22-11-01 to 30-4-05
32/08	Suresh Saini	21-5-01	2-6-00 to 21-5-01	to 26-6-00 to 22-5-01	to 2-6-00 to 20-5-01
34/08	Shankarlal Sharma	21-5-01	26-6-00 to 21-5-01	to 26-6-00 to 21-5-01	to 26-6-00 to 20-5-01
4/09	Rameshwar Prasad	12-5-02 (as per claim)	13-6-01 to 12-5-02	to 13-6-01 to 12-5-02	to 13-6-01 to 12-5-02

Case No. 9/08, 15/08, 16/08, 32/08, 34/08, 4/09

44. As per averments in the claim statements the claimants Sh. Sunder Lal, Sh. Vinod, Sh. Ramswaroop, Sh. Suresh, Sh. Shankarlal and Sh. Rameshwar had worked during period 26-6-01 to 24-5-02, 25-6-01 to 12-5-02, 26-6-00 to 25-5-01, 2-6-00 to 21-5-01, 26-6-00 to 21-5-01 and 13-6-01 to 12-5-02 respectively. In reply to the claim statement it has been pleaded that the above named persons had worked as trainees during period 25-6-01 to 24-5-02, 25-6-01 to 24-5-02, 26-6-00 to 25-5-01, 26-6-00 to 22-5-01, 26-6-00 to 21-5-01 and 13-6-01 to 12-5-02 respectively.

45. It is not in dispute that the above named claimants were performing pump the work relating petrol pump i.e. measurement, delivering petrol into the vehicle of customers and dealing with customer etc. In reply to the claim, and in evidence of the management witness Sh. R.D. Gupta, it has been admitted that Sh. Sunder Lal, Sh. Vinod, Sh. Ramswaroop, Sh. Suresh, Sh. Shankarlal and Sh. Rameshwar had performed the said work during period 25-6-01 to 24-5-02, 25-6-01 to 24-5-02, 26-6-00 to 25-5-01, 26-6-00 to 22-5-01, 26-6-00 to 21-5-01, 13-6-01 to 12-5-02 respectively.

46. Thus, it is established from pleadings and management evidence itself that the concerned claimants Sh. Sunder Lal, Sh. Vinod, Sh. Ramswaroop, Sh. Suresh, Sh. Shankarlal and Sh. Rameshwar had worked for more than 240 days during preceding 12 months from the alleged date of termination i.e. 24-5-02, 12-5-02, 25-5-01, 21-5-01, 21-5-01 and 12-5-02 respectively.

47. On these facts the claimants have succeeded to establish that they have completed 240 days of actual service under the employment of the corporation in a

calendar preceding to their termination and their existed a nexus of employer employee relation between the parties. Indisputably, prior to their termination they were not served with one month's notice or the pay in lieu of the notice and no retrenchment compensation were paid to them. Thus, their termination was in violation of Section 25-F of the I.D. Act.

Case Nos. 3/08 and 28/08

48. As per version of the claimants Sh. Narender and Sh. Devi Sahai their services were terminated on 3-5-05 and 1-5-05 respectively. It has been denied by the management therefore, initial burden was on the claimants to establish that they had worked for at least 240 days during just preceding 12 months from the alleged date of their termination i.e. 3-5-05 and 1-5-05 respectively.

49. In case no. 3/08 and 28/08 claimants Sh. Narender and Sh. Devi Sahai have pleaded in their claim statement that they had worked at Khasa Khoti Petrol pump during period 13-7-01 to 3-4-05 and 22-11-01 to 1-5-05 and their services were terminated on 3-5-05 and 1-5-05 respectively. Whereas as per averments in the reply to the respective claim statement the above named claimants have worked during period 3-7-01 to 2-6-02 and 22-11-01 to 21-10-02 respectively. But the above claimants have pleaded in their respective rejoinder that they had worked during period 3-7-01 to 2-6-02 and 22-11-01 to 21-10-02 respectively. Contrary to this in their affidavits they have deposed that they had worked during period 3-7-01 to 2-4-05 and 22-11-01 to 30-4-05 respectively.

50. Therefore, the statement of the claimants that they had worked up to 2-4-05 and 30-4-05 are contrary to their own admission in rejoinder. The documents produced by the claimants are not relevant in this regard. Except the statement of the claimants on affidavit there is no material on record to substantiate their claim that they had worked for at least 240 days during period of 12 months just preceding the date of termination stated by them i.e. 3-5-05 and 1-5-05 respectively. The claimants Sh. Narender and Sh. Devi Sahai have failed to establish that they had completed 240 days of actual service under the employment of the corporation during just preceding 12 months from the said respective dates of their termination. Therefore, the provisions of Section 25-F of the I.D. Act are not attracted in their matter.

51. Accordingly, the point no.1 is decided in favour of all the claimants Sh. Sunder Lal, Sh. Vinod Kumar, Sh. Ramswaroop Bagoria, Sh. Suresh Saini, Sh. Shankarlal Sharma, and Sh. Rameshwar Prasad but the same is decided against the claimants Sh. Narender Singh and Sh. Devi Sahai Jangid. As regard point no. 3 is concerned, it is decided in favour of all the claimants.

Point No. 2

52. The workmen in their pleadings have stated that after their termination the fresh hands were recruited by

the Corporation. They have repeated the same in their statement on affidavit.

53. The management witness Sh. Sunil Gupta has denied that subsequent to the alleged termination of the workmen fresh hands have been recruited by the Corporation. In cross examination he has denied that Ex-W-1 advertisement regarding vacancies was published by the corporation. He has stated that on the basis of Ex-W-3 which is pertaining to release of bonus to trainees it cannot be said that the person named at S.Nos.17, 18, 19 in the said list were engaged after year 2002. He has stated that no seniority list was prepared because there was no necessity to do so.

54. In claim statements it is alleged that subsequent to the termination of the claimants fresh hands were engaged by the non-applicant corporation in violation of Section 25-H but the claimants have not named any such person in their pleadings. Even in their affidavits the names of the persons said to be engaged have not been disclosed. From the copy of the advertisement for salesman published in newspaper on 27-9-2007(Ex-W-1), it is not established that the said advertisement was published by the Corporation and in pursuance of the said advertisement fresh hands were recruited by the Corporation. Mere bald allegations in their oral evidence on this point without any corroborative evidence do not inspire confidence and cannot be relied upon. The claimants have failed to establish that subsequent to their termination fresh hands were employed by the corporation in violation of Section of 25-G of the I.D. Act. Therefore, this point is decided against the claimants.

55. On account of the decision on point no.1 and 3 in favour of the claimants Sh. Sunder Lal, Sh. Vinod, Sh. Ramswaroop, Sh. Suresh, Sh. Shankarlal and Sh. Rameshwar their respective claim deserve to be allowed and it is held that the action of the management in terminating the services of the above claimants was not legal and justified being in violation of the provisions of Section 25-F of the I.D. Act. Since claimants Sh. Narender and Sh. Devi Sahai have failed to establish that their services were terminated in violation of section 25-F of the I.D. Act, their claims deserves to be rejected.

Relief

56. The learned representative of the claimants has contended that claimants should be reinstated in service with full back wages. In this regard he has also referred earlier award passed in the year 2005 by this tribunal in almost identical matter. Whereas on behalf of the corporation it has been contended that no posts exist in the corporation, therefore, the reinstatement of the claimants could not meet the ends of justice in absence of any post.

57. Earlier in cases of termination in violation of Section 25-F reinstatement of the workman with full back wages used to be automatically granted, but keeping in

view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of the Hon'ble Supreme Court. In a large number of decisions in the matter of grant of relief of the kind, Hon'ble Apex Court has distinguished between a daily wager who does not hold a post and a permanent employee.

58. In recent decision (2010) 1 SCC (LS) 545 Jagbir Singh V/s Haryana State Agriculture Mktg. Board after considering the earlier decisions referred to therein on the point should an order of reinstatement automatically follows in a case of violation of section 25-F of the I.D. Act Hon'ble Apex Court has observed that :—

“It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This court has distinguished between a daily wager who does not hold a post and a permanent employee.”

59. Continuing this line of approach in decision (2010) 2 SCC (LS) 376 Hon'ble Apex Court has observed as under:-

“While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour court can award compensation.”

“There has been a shift in the legal position laid down by the Supreme Court and now there is no hard and-fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be

‘awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case.’

60. In present matter, the claimants Sh. Sunder Lal, Sh. Vinod, Sh. Ramswaroop, Sh. Suresh, Sh. Shankarlal and Sh. Rameshwar had worked with the corporation for a period of less than one year and were drawing consolidated wages round about Rs.1600 p.m. While giving relief this fact cannot be ignored that the claimants were not holding any regular post. Keeping in view the nature of job and nature of employment, the lapse of time after termination of the services, the total length of service rendered by the claimants and having regard to entire facts and circumstances in the cases instead of reinstating them the interest of justice will be sub-served by paying compensation to the workmen instead and in lieu of relief of reinstatement in service.

61. Accordingly, references in case nos. 9/08, 15/08, 16/08, 32/08, 34/08, 4/09 are answered in affirmative in favour of the workmen and against the Indian Oil Corporation Ltd. It is held that the action of the management in termination of the services of the claimants Sh. Sunder Lal, Sh. Vinod, Sh. Ramswaroop, Sh. Suresh, Sh. Shankarlal and Sh. Rameshwar is illegal and unjustified respectively. Therefore, the non-applicant Corporation is directed to pay compensation to aforementioned each claimant worth Rs.40,000 (Rupees Forty Thousands) instead and in lieu of their reinstatement in service. The payments shall be made within eight weeks from the date of publication of award failing which it shall carry interest @ 9%.

62. Since, in references in respect of claimants in Sh. Narender and Sh. Devi Sahai (in case no. 3/08 and 28/08 respectively), it is not established that alleged action of the management in termination of their services was in violation in Section 25-F and 25-G of the I.D. Act, the same are answered in negative against the said claimants. Resultantly, they are not entitled to get any relief.

63. A common Award is passed in these terms accordingly.

64. Award as above.

65. Let a copy of the award be sent to the Central Government for publication u/s 17(1) of the Act. A copy of the award be also annexed with each connected file.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2011

का.आ. 3214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स त्रावणकोर टिटोनियम प्रोडक्ट लिमिटेड तिरुवनन्तपुरम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय,

इरनाकुलम के पंचाट (संदर्भ संख्या 29/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2011 को प्राप्त हुआ था।

[सं. एल-43012/8/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2011

S.O. 3214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.29/2009) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Travancore Titanium Products Ltd. (Thiruvananthapuram) and their workman, which was received by the Central Government on 10-10-2011.

[No. L-43012/8/2009-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri. D. Sreevallabhan, B.Sc., LL.B.,
Presiding Officer

(Tuesday the 20th day of September, 2011 /29th
Bhadrapada, 1933)

I.D.29/2009

Union : The General Secretary,
Titanium Products Labour Union,
INTUC House, Kunnumpuram,
Thiruvananthapuram-695 001.

(In person)

Management : The Managing Director,
Travancore Titanium Products Ltd.,
Post Box No.1,
Thiruvananthapuram - 695 021.

(In person)

This case coming up for final hearing on 20-9-2011 and this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference under Section 10(1)(d) of Industrial Disputes Act, 1947.

The reference is :

“Whether the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service to Shri. P.J.Stephen, Work No.1520, in spite of being medically fit, by two years from 1-10-2008 is justified? What relief the workman is entitled to?”

2. After appearance of both parties union filed claim statement and management filed written statement. After submitting the pleadings the case was posted for evidence. In spite of several adjournments union did not adduce any evidence. As the union remained absent without any representation on today union was declared exparte. Management though represented has not adduced any evidence. It was submitted on behalf of the management that the claim put forward by the union is not genuine and legal. Since union has not adduced any evidence to substantiate that the action of the management in not granting customary concession of extension of service to Shri P.J.Stephen, Work No.1520 is not justifiable, it is to be presumed that there is no existing dispute for adjudication. Hence an award can be passed by holding that the action of the management is justifiable.

In the result an award is passed to the effect that the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service by two years from 1-10-2008 to Shri P.J.Stephen, Work No. 1520 is justified.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 20th day of September, 2011.

D. SREEVALLABHAN, Presiding Officer

Appendix - NIL

नई दिल्ली, 10 अक्टूबर, 2011

का.आ. 3215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स त्रावणकोर टिटेनियम प्रोडक्ट लिमिटेड तिरुवनन्तपुरम के प्रबंधन के संबंध में उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इरनाकुलम के पंचाट (संदर्भ संख्या 22/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2011 को प्राप्त हुआ था।

[सं. एल-43011/1/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2011

S.O. 3215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2009) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Travancore Titanium Products Ltd. (Thiruvananthapuram) and their workman, which was received by the Central Government on 10-10-2011.

[No. L-43011/1/2009-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present : Shri. D. Sreevallabhan, B.Sc., LL.B.,
Presiding Officer

(Tuesday the 20th day of September, 2011 /29th
Bhadrapada, 1933)

I.D. 20/2009

- Union :** The General Secretary,
Titanium Products Labour Union,
INTUC House, Kunnumpuram,
Thiruvananthapuram 695 001.
(In person)
- Management :** The Managing Director,
Travancore Titanium Products Ltd.,
Post Box No.1,
Thiruvananthapuram - 695 021.
(In person)

This case coming up for final hearing on 20-9-2011 and this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference under Section 10(1)(d) of Industrial Disputes Act, 1947.

The reference is :

"Whether the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service to Shri Gopalakrishnan Nair N. Work No. 9123 in spite of being medically fit, by two years from 1-9-2008 is justified? What relief the workman is entitled to?"

2. After appearance of both parties union filed claim statement and management filed written statement. After submitting the pleadings the case was posted for evidence. In spite of several adjournments union did not adduce any evidence. As the union remained absent without any representation on today union was declared ex parte. Management though represented has not adduced any evidence. It was submitted on behalf of the management that the claim put forward by the union is not genuine and legal. Since union has not adduced any evidence to substantiate that the action of the management in not granting customary concession of extension of service to Shri Gopalakrishnan Nair N. Work No.9123 is not justifiable, it is to be presumed that there is no existing dispute for adjudication. Hence an award can be passed by holding that the action of the management is justifiable.

In the result an award is passed to the effect that the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service by two years from

1-9-2008 to Shri Gopalakrishnan Nair N. Work No. 9123 is justified.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 20th day of September, 2011.

D. SREEVALLABHAN, Presiding Officer

Appendix - NIL

नई दिल्ली, 10 अक्टूबर, 2011

का.आ. 3216.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत मैसर्स त्रावणकोर टिटैनियम प्रोडक्ट लिमिटेड तिरुवनन्तपुरम के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इरनाकुलम के पंचाट (संदर्भ संख्या 21/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2011 को प्राप्त हुआ था।

[सं. एल-43012/2/2009-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2011

S.O. 3216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2009) of the Central Government Industrial Tribunal/Labour Court Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Travancore Titanium Products Ltd. (Thiruvananthapuram) and their workman, which was received by the Central Government on 10-10-2011.

[No. L-43012/2/2009-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri. D. Sreevallabhan,
B.Sc., LL.B., Presiding Officer
(Tuesday the 20th day of September, 2011 /29th
Bhadrapada, 1933)

I. D. 21/2009

- Union :** The General Secretary,
Titanium Products Labour Union,
INTUC House, Kunnumpuram,
Thiruvananthapuram-695 001.
(In person)
- Management :** The Managing Director,
Travancore Titanium Products Ltd.,
Post Box No.1,
Thiruvananthapuram - 695 021.
(In person)

This case coming up for final hearing on 20-9-2011 and this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference under Section 10(1)(d) of Industrial Disputes Act, 1947.

The reference is :

"Whether the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service to Shri Joseph P. Work No.1558, in spite of being medically fit, by two years from 1-10-2008 is justified? What relief the workman is entitled to?"

2. After appearance of both parties union filed claim statement and management filed written statement. After submitting the pleadings the case was posted for evidence. In spite of several adjournments union did not adduce any evidence. As the union remained absent without any representation on today union was declared exparte. Management though represented has not adduced any evidence. It was submitted on behalf of the management that the claim put forward by the union is not genuine and legal. Since union has not adduced any evidence to substantiate that the action of the management in not granting customary concession of extension of service to Shri Joseph P. Work No.1558 is not justifiable, it is to be presumed that there is no existing dispute for adjudication. Hence an award can be passed by holding that the action of the management is justifiable.

In the result an award is passed to the effect that the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service by two years from 1-10-2008 to Shri Joseph P. Work No.1558 is justified.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 20th day of September, 2011.

D. SREEVALLABHAN, Presiding Officer.

Appendix - NIL

नई दिल्ली, 10 अक्टूबर, 2011

का.आ. 3217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत मैसर्स त्रावणकोर टिटैनियम प्रोडक्ट लिमिटेड तिरुवनन्तपुरम के प्रबंधन के संबंध में निर्योजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इरनाकुलमके पंचाट (संदर्भ संख्या 6/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2011 को प्राप्त हुआ था।

[सं. एल-43011/4/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2011

S.O. 3217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 6/2009) of the Central Government Industrial Tribunal/Labour Court Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Travancore Titanium Products Ltd. (Thiruvananthapuram) and their workman, which was received by the Central Government on 10-10-2011.

[No. L-43011/4/2008-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, ERNAKULAM**

Present: Shri. D. Sreevallabhan,

B.Sc., LL.B., Presiding Officer

(Tuesday the 20th day of September, 2011 /29th Bhadrapada, 1933)

I. D. 21/2009

Union : The General Secretary,
Titanium Products Labour Union,
INTUC House, Kunnumpuram,
Thiruvananthapuram-695 001.
(In person)

Management : The Managing Director,
Travancore Titanium Products Ltd.,
Post Box No.1,
Thiruvananthapuram - 695 021.
(In person)

This case coming up for final hearing on 20-9-2011 and this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference under Section 10(1)(d) of Industrial Disputes Act, 1947.

The reference is :

"Whether the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service, being medically fit, by two years from 1-6-2008 to Shri A.Sreedharan Nadar, work No.1585 is justified? What relief the workman is entitled to?"

2. After appearance of both parties union filed claim statement and management filed written statement. A rejoinder was also filed by the union. After submitting the pleadings the case was posted for evidence. In spite of several adjournments union did not adduce any evidence. As the union remained absent without any representation on today union was declared exparte. Management though represented has not adduced any evidence. It was submitted on behalf of the management that the claim put forward by the union is not genuine and legal. Since union has not adduced any evidence to substantiate that the

action of the management in not granting customary concession of extension of service to Shri. A. Sreedharan Nadar, work No.1585 is not justifiable, it is to be presumed that there is no existing dispute for adjudication. Hence an award can be passed by holding that the action of the management is justifiable.

In the result an award is passed to the effect that the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service by two years from 1-6-2008 to Shri A. Sreedharan Nadar, work No.1585 is justified.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 20th day of September, 2011.

D. SREEVALLABHAN, Presiding Officer

Appendix - NIL

नई दिल्ली, 10 अक्टूबर, 2011

का.आ. 3218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत मैसर्स त्रावणकोर टिटैनियम प्रोडक्ट लिमिटेड, तिरुवनन्तपुरम के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इरनाकुलम के पंचाट (संदर्भ संख्या 5/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2011 को प्राप्त हुआ था।

[सं. एल-43011/5/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2011

S.O. 3218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 5/2009) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Travancor Titanium Products Ltd. (Thiruvananthapuram) and their workman, which was received by the Central Government on 10-10-2011.

[No. L-43011/5/2008-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, ERNAKULAM

Present: Shri. D. Sreevallabhan,

B.Sc., LL.B., Presiding Officer

(Tuesday the 20th day of September, 2011 /29th Bhadrpada, 1933)

I. D. 5/2009

Union : The General Secretary,
Titanium Products Labour Union,
INTUC House, Kunnumpuram,
Thiruvananthapuram-695 001.
(In person)

Management : The Managing Director,
Travancore Titanium Products Ltd.,
Post Box No.1,
Thiruvananthapuram-695 021.
(In person)

This case coming up for final hearing on 20-9-2011 and this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference under Section 10(1)(d) of Industrial Disputes Act, 1947.

The reference is :

"Whether the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service, being medically fit, by two years from 1-6-2008 to Shri P. Salim, Work No.1562 is justified? What relief the workman is entitled to?"

2. After appearance of both parties union filed claim statement and management filed written statement. A rejoinder was also filed by the union. After submitting the pleadings the case was posted for evidence. In spite of several adjournments union did not adduce any evidence. As the union remained absent without any representation on, today union was declared exparte. Management though represented has not adduced any evidence. It was submitted on behalf of the management that the claim put forward by the union is not genuine and legal. Since union has not adduced any evidence to substantiate that the action of the management in not granting customary concession of extension of service to Shri P. Salim, Work No.1562 is not justifiable, it is to be presumed that there is no existing dispute for adjudication. Hence an award can be passed by holding that the action of the management is justifiable.

In the result an award is passed to the effect that the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service by two years from 1-6-2008 to Shri P. Salim, Work No.1562 is justified.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 20th day of September, 2011.

D. SREEVALLABHAN, Presiding Officer

Appendix - NIL

नई दिल्ली, 10 अक्टूबर, 2011

का.आ. 3219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत मैसर्स त्रावणकोर टिटेनियम प्रोडक्ट लिमिटेड, तिरुवनन्तपुरम के प्रबंध-तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इरनाकुलम के पंचाट (संदर्भ संख्या 4/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2011 को प्राप्त हुआ था।

[सं. एल-43011/6/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2011

S.O. 3219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/2009) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Travancore Titanium Products Ltd. (Thiruvananthapuram) and their workman, which was received by the Central Government on 10-10-2011.

[No. L-43011/6/2008-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, ERNAKULAM

Present: Shri. D. Sreevallabhan,
B.Sc., LL.B., Presiding Officer
(Tuesday the 20th day of September, 2011/29th Bhadrpada, 1933)

I. D. 4/2009

Union : The General Secretary,
Titanium Products Labour Union,
INTUC House, Kunnumpuram,
Thiruvananthapuram-695 001.

(In person)

Management : The Managing Director,
Travancore Titanium Products Ltd.,
Post Box No.1,
Thiruvananthapuram-695 021.

(In person)

This case coming up for final hearing on 20-9-2011 and this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference under Section 10(1)(d) of Industrial Disputes Act, 1947.

The reference is :

“Whether the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of

service, being medically fit, by two years from 1-6-2008 to Shri C. Mohanan, Work No.1425 is justified? What relief the workman is entitled to?”

2. After appearance of both parties union filed claim statement and management filed written statement. A rejoinder was also filed by the union. After submitting the pleadings the case was posted for evidence. In spite of several adjournments union did not adduce any evidence. As the union remained absent without any representation on today union was declared exparte. Management though represented has not adduced any evidence. It was submitted on behalf of the management that the claim put forward by the union is not genuine and legal. Since union has not adduced any evidence to substantiate that the action of the management in not granting customary concession of extension of service to Shri C. Mohanan, Work No.1425 is not justifiable, it is to be presumed that there is no existing dispute for adjudication. Hence an award can be passed by holding that the action of the management is justifiable.

In the result an award is passed to the effect that the action of the management of M/s.Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service by two years from 1-6-2008 to Shri C. Mohanan, Work No.1425 is justified.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 20th day of September, 2011.

D. SREEVALLABHAN, Presiding Officer

Appendix - NIL

नई दिल्ली, 10 अक्टूबर, 2011

का.आ. 3220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत मैसर्स त्रावणकोर टिटेनियम प्रोडक्ट लिमिटेड, तिरुवनन्तपुरम के प्रबंध-तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इरनाकुलम के पंचाट (संदर्भ संख्या 18/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2011 को प्राप्त हुआ था।

[सं. एल-43012/15/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2011

S.O. 3220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2009) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the

Industrial Dispute between the employers in relation to the management of Travancore Titanium Products Ltd. (Thiruvananthapuram) and their workman, which was received by the Central Government on 10-10-2011.

[F.No.L-43012/15/2008-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, ERNAKULAM

Present: Shri. D. Sreevallabhan,
B.Sc., LL.B., Presiding Officer
(Tuesday the 20th day of September, 2011/29th Bhadrapada, 1933)

I.D. 18/2009

Union : The General Secretary,
Titanium Products Labour Union,
INTUC House, Kunnumpuram,
Thiruvananthapuram-695 001.
(In person)

Management : The Managing Director,
Travancore Titanium Products Ltd.,
Titanium P. O.,
Trivandrum- 695 021.
(In person)

This case coming up for final hearing on 20-9-2011 and this Tribunal-cum-Labour Court on the same day passed the following :

AWARD

This is a reference under Section 10(1)(d) of Industrial Disputes Act, 1947.

The reference is :

“Whether the action of the management of M/s. Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service, being medically fit, by two years from 1-8-2008 to Shri S. Sreekantan Nair, Work No.1772 is justified? To what relief the workman is entitled to?”

2. After appearance of both parties union filed claim statement and management filed written statement. After submitting the pleadings the case was posted for evidence. In spite of several adjournments union did not adduce any evidence. As the union remained absent without any representation on today union was declared exparte. Management though represented has not adduced any evidence. It was submitted on behalf of the management that the claim put forward by the union is not genuine and legal. Since ‘union has not adduced any evidence to substantiate that the action of the management in not granting customary concession of extension of service to Shri. S. Sreekantan Nair, Work No.1772 is not justifiable, it is to be presumed that there is no existing dispute for adjudication. Hence an award can be passed by holding that the action of the management is justifiable.

In the result an award is passed to the effect that the action of the management of M/s.Travancore Titanium Products, Trivandrum in not granting customary concession of extension of service by two years from 1-8-2008 to Shri S. Sreekantan Nair, work No.1772 is justified.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 20th day of September, 2011.

D. SREEVALLABHAN, Presiding Officer

Appendix - NIL

नई दिल्ली, 10 अक्तूबर, 2011

का.आ. 3221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 66/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2011 को प्राप्त हुआ था।

[सं. एल-12012/211/1998-आई आर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 10th October, 2011

S.O. 3221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur now as shown in the Annexure, in the Industrial Dispute between the management of Zonal Manager, UCO Bank, and their workmen, received by the Central Government on 10-10-2011.

[No.L-12012/211/1998-IR (B-II)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR.

Industrial Dispute No. 66 of 99

Between

Sri Anoop Kumar Sharma,
C/o Sri B P Saxena,
426, W-2 Basant Vihar,
Kanpur

And

The Zonal Manager,
UCO Bank,
Zonal Office,
23, Vidhan Sabha Marg,
Lucknow.

AWARD

1. Central Government, MoL, New Delhi vide notification No.L-12012/211/98-IR(B-II) dated 23-3-99, has referred the following dispute to this tribunal for adjudication—

2. Whether the action of the management of UCO Bank to terminate the service of Sri Anoop Kumar Sharma, Peon w.e.f., 21-5-95 without observing the provisions of ID Act, is justified or not? If not to what relief the workman is entitled to?

3. Briefly stated facts of the case are that the claimant was appointed by the opposite party bank at its different branches for the following spells—

20-8-92 to 31-5-93 at Shujatganj Branch

14-8-93 to 8-2-94 at Lajpat Nagar Branch

11-3-94 to 20-5-95 at Shujatganj Branch

4. It is further stated that the Claimant during the aforesaid period have completed 'more than 240 days of continuous service, he was not paid his regular wages as compared to the staff working as peon, he was never given any appointment letter of termination letter by the branch, he performed the regular and permanent work of a peon at the different branches of the bank, at the time of termination of his services neither he was given any notice, notice pay or retrenchment compensation, therefore, the bank, committed breach of section 25F of Industrial Disputes Act, 1947, taking work of regular and permanent nature and without providing pay at admissible rate amounts to unfair labour practice, therefore, the claimant has claimed that he be directed to be reinstated in the service of the bank with full back wages and all consequential benefits.

5. The opposite party has refuted the claim of the claimant on a number of grounds. It is alleged by them that the claimant was never appointed by the bank as claimed by him. He was engaged by the bank for mitigating the exigency and temporary work of the bank from time to time for which he was paid remuneration through vouchers. He never completed 240 days or more as claimed by him. He is not a workman as defined under the provisions of the Act. The claimant was never paid any wages as are being paid to the regular and permanent employee of the bank. The bank has never terminated the services of the claimant, entire allegations levelled by the claimant are false bogus and are not having any merit under the provisions of the Industrial Disputes Act, therefore, the claimant is not entitled for any relief as is claimed by him and his claim is liable to be rejected.

6. Claimant has also filed rejoinder but nothing new has been alleged therein except reiterating the fact already pleaded by him in his claim statement.

7. The short question in this case to be decided is whether the claimant has worked for 240 days or more in a calendar year preceding the date of his termination which is 21-5-95

8. Opposite party has specifically contended that the claimant was never appointed on the post of peon. It is stated by them that according to the exigencies of work the claimant was engaged on daily rate basis to fetch water and was paid daily through vouchers.

9. Claimant has also admitted that he was not issued any appointment letter. He was not given any termination letter. He also admitted that the payment of his wages was made through vouchers either or weekly or after 15 days. He stated that he does not know the period of the voucher which he has filed.

10. I have examined the documentary evidence filed by both the parties.

11. Claimant has filed two documents vide list 1/1 the paper is 17/2. It is a photocopy of the letter which is interse correspondence between the banks which does not relate to the workman. Another paper is photocopy of a voucher of Rs. 180 dated 1-6-94, the original of this has also been filed which is paper no. 27/2 which shows that he was paid sum amount of Rs. 180.

12. Claimant has also made an application to summon the record from the opposite party. It is the contention of the opposite party that whatever the record was summoned they have filed it and they have not withheld the documents with malafide intention.

13. Opposite party has filed the photocopy of the same voucher of Rs. 180. In addition they have also filed photo copy of a voucher showing an amount of Rs. 15 dated 23-6-93.

14. The termination date in the reference order is dated 21-5-95. There is no other voucher except mentioned above. The claimant has also filed certain documents through application dated 17-3-11. I have also considered all these documents. He has shown the detail of working days at Shujatganj Branch as on 31-12-93. It comes out to only 196 days.

15. Therefore initially the burden lies on the claimant to prove that he had worked for 240 days or more continuously before the date of his termination. From the documentary or oral evidence the claimant has not been able to prove his case.

16. Management has placed reliance upon a decision 2005 LLR I Supreme Court of India in between MP Electricity Board Versus Hari Ram, and others.

17. The Hon'ble Apex Court held that in the absence of documentary prove about continuous working of the working pertaining to a particular period, the workman cannot be held to have worked for a continuous period of 240 days. The initial burden of prove to establish that the workman has worked continuously for 240 days will rest upon the workman and not upon the management.

18. Another decision given by the opposite party is 2004 (103) FLR 192, SC, Rajasthan State Ganganagar Mills

Limited and State of Rajasthan and others. The Hon'ble Supreme Court held that mere filing of an affidavit and giving his own statement before the labor court - not enough evidence to prove the fact to establish that the workman has worked 240 days or more.

19 Workman has placed reliance upon a decision 2005 (105) FLR page 383 SC in between. Bank of Baroda and Ghimar Bhai Harji Bhai Rabri.

20. In the aforesaid case the claimant has produced the payment vouchers for the relevant period and then the tribunal had come to the conclusion that the workman had worked for more than 240 days.

21. But in the present case there are only two vouchers dated 11-6-94 and 23-6-94 filed by the parties. From these two vouchers it cannot be held that the workman had completed more than 240 days preceding 12 calendar months from the date of his termination. It has also been observed that the opposite party has not committed any malafide. They have come out with clean hand. When witness of the management MW.I Sri B. S. Shukla who is a retired branch manager who has deposed on oath stating that the workman had never completed 240 days in a calendar year. He has not been cross examined. Therefore his evidence remains un-cotroverted which cannot be belied.

22. There is no such contention of the claimant that his attendance was marked in muster roll or in attendance register. He has not summoned any such type of documents from the opposite party. Therefore from the evidence which has been produced by the claimant it is difficult to prove that he has worked for 240 days continuously with the bank.

23. Therefore, the claimant has failed to discharge his burden.

24. Accordingly the reference is answered against the claimant and in favor of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2011

का.आ. 3222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचाट (संदर्भ संख्या 30/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-12012/186/1998-आई आर (बी-11)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 11th October, 2011

S.O. 3222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.30/1999) of the Central Government Industrial Tribunal-Cum-Labour Court

Kanpur as shown in the Annexure in the Industrial Dispute between the management of Dena Bank, and their workmen, received by the Central Government on 11-10-2011.

[No. L-12012/186/1998-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR.

Industrial Dispute No. 30 of 1999

Between—

Sri Arun Kumar Singh,
C/o Sri B P Saxena,
425, W-2 Basant Vihar,
Kanpur.

And

Dena Bank
The Regional Manager,
DB, 28A Praveen House,
Vidhan Sabha Marg,
Lucknow.

AWARD

1. Central Government, MoL, New Delhi vide notification no.L-12012/186/98/IR(B-II) dated 24-2-99, has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of Dena Bank in terminating of Sh. Arun Kumar Singh from his services with effect from 13-4-94 is justified? If not what relief the workman is entitled to?

3. Briefly stated facts giving rise to the present dispute is that Sri Arun Kumar Singh was appointed as peon on 24-7-75 and posted at Moradabad Branch of the bank. The work and conduct of the workman was good and he was promoted as clerk-cum-cashier in November 1978 and posted at Kanpur Branch of the Bank. Thereafter the Regional Manager of the bank served the applicant with charge sheet cum suspension order dated 18-8-84, over some fraud alleged to be committed by the workman. The time when the charge sheet was served upon the workman by the Regional Manager he was under administrative control of Regional Office, New DeJhi.

4. It is alleged that as a consequences of filing of FIR the police instituted a case against the applicant before the Metropolitan Magistrate VII, Kanpur Nagar. In the said case the applicant was acquitted by the said court on 25-3-92. After the acquittal of the workman the bank instituted an enquiry against the applicant. For conducting the inquiry the Regional Manager appointed Sri R. K. Gupta as enquiry officer, the said enquiry officer commenced the enquiry on 12-8-92 and concluded the same on 22-9-93.

During the course of conduct of enquiry there was flagrant denial of natural justice to the workman due to which the enquiry conducted stood vitiated? After the conclusion of the enquiry report was submitted by the enquiry officer before the Regional Manager / Disciplinary Authority and on the basis of report of enquiry officer, the disciplinary authority inflicted the punishment of dismissal from bank's service without notice with immediate effect vide order dated 13-4-94. Appeal preferred by the workman against the order of the punishment did not find favor and was accordingly rejected vide order dated 18-3-96. The workman has further assailed the action of the opposite party bank on the ground that there was flagrant denial of natural justice in the course of disciplinary action as much as the inspection of the documents prayed for at page No.2 of the proceedings recorded on 22-9-93 was not afforded by the enquiry officer, the findings of the enquiry officer which was concurred by the disciplinary authority are perverse. M.W.2 produced as witness before the enquiry officer was a tutored witness and since the findings are based on the evidence of this witness who was a tutored witness, the findings of enquiry officer are perverse. The enquiry officer failed to consider the vital point that the instruments which are the basis of withdrawal of amount are passed in the bank after verifying the signatures on these instruments with the signature specimen card. In fact it is a case of no evidence; therefore, any finding based on no evidence is no finding in the eye of law. As all the payments were made after verifying the signatures of the account holder from the specimen signature card therefore, it must be presumed that the payments of the instruments are genuine. If it is so how it can be presumed that fraud was committed particularly when there were no complaint from even a single account holder against the workman.

5. Since it is the allegation leveled against the workman that the instruments that is withdrawal form are missing therefore there was no evidence that the workman posted the entries.

6. In view of above it has been prayed that the entire action of the opposite party is neither legal nor justified therefore, the punishment order as well as appellate order is liable to be set aside and the workman is entitled to be reinstated in the service of the bank with continuity of service, full back wages and all consequential benefits attached with the post.

7. The opposite party bank filed reply wherein it is not disputed that the workman was appointed as clerk cum-cashier in November 1978. The workman was assigned the job of ledger keeper of saving bank account counter. During the course of his duties the workman fraudulently and with malafide intention of causing illegal gain to himself and illegal loss to the bank made certain fictitious credit entries in certain saving bank accounts and later on the workman withdrew these amounts in collusion with the holders of the respective saving bank accounts thus defrauded the

bank and caused huge financial loss to the bank. The bank after detection of the aforesaid fraud lodged a FIR against the workman on 5-8-84 and thereafter the workman was served with a charge sheet dated 18-8-84 by the Regional Manager of the bank. The workman was given benefit of doubt in the said criminal case and was acquitted on 25-3-92. It is wrong to say that during the course of enquiry any violation of natural justice was done and on the contrary enquiry was properly conducted and the workman was given full opportunity of hearing during the conduct of enquiry. Enquiry officer has given its finding that the charges of misappropriation leveled against the petitioner have been proved beyond doubt. The workman has been rightfully dismissed as he has been found guilty of misappropriation of bank's fund. The grounds mentioned in appeal were not found satisfactory by the appellant authority as such the appeal was rightly rejected on 18-3-96. Full opportunity of hearing and to defend the case, the petitioner was afford adequate opportunity.

8. Since the charge leveled against the workman was found proved therefore he was rightly punished and as such there was no occasion for the petitioner to raise the alleged dispute before the Industrial Forum. It is further stated that there was also no occasion for the workman to file conciliation proceedings after he was found guilty of gross misconduct. The workman was rightly punished and it is wrong to say that there was any denial of natural justice in conduct of enquiry proceedings. It is also denied that the finding of the enquiry officer is perverse. In fact the evidence of MW 2 is misquoted. The withdrawal forms have been surreptitiously removed by the workman. The credit and debit entries are in the hand writing of the petitioner. There are no related entries of such account in the subsidiary. Lastly it is once again reiterated by the opposite party bank that the workman was rightly removed/ dismissed from the service of the bank after charge was found proved against the workman. Therefore, it has been prayed by the opposite party that the claim of the workman is liable to be rejected being devoid of merit and it be further held that the workman is not entitled for any relief as claimed by him in his claim petition.

9. The workman has also filed rejoinder but nothing new has been pleaded therein except reiterating the stand of the claim petition.

10. Heard and perused the record at length.

11. I would like to place brief description of the documents filed by the management before the enquiry officer. The documents placed by the management vide list dated 3-4-02 numbering from CN 1/MD-1 to CN/1-MD/51, will form the record of this Award.

12. These documents are cashier cash scroll of different dates, ledger folio of S/B Account No. 1405 (photocopy), Cash Scrolls of officers of different dates, copy of the cheque, copy of the subsidiary of different dates, photocopy of ledger folio of saving bank account

number 2262 Ext. CN-7 / MD-19, and the officer cash scroll and cashier cash scroll and subsidiary register relating to this period and photocopy of other photocopy of Leger numbers have been filed.

13. Opposite party has also filed in original the documents that is charge sheet-cum-suspension order, finding of the enquiry officer, original reply of Arun Kumar Singh against the finding of the enquiry officer, Original Appeal Filed by the CSE, Original proceeding of person hearing, Original dismissal order and Eight original bank register vide lit 57/1.

14. Opposite party has also filed original inquiry proceedings.

15. Claimant had also filed a document which is of Dena Bank Regional Office Lucknow Memorandum No. so and so dated 13-4-94.

16. Claimant had adduced himself as w.w.I Sri Arun Kumar Singh. He has adduced himself on 29-6-2004 at the stage when the matter was being heard on a preliminary issue that is whether the domestic inquiry conducted against the CSE, was just and fair.

17. It is pertinent to mention that in this case the domestic inquiry was found to be vitiated by an order of my learned predecessor. Thereafter the opposite party was permitted to prove the charges against the CSE .

18. I have perused the entire documentary as well as oral evidence available on the record of the case.

19. To prove the charges the opposite party has produced a witness M.W.2 Sri Manohar Sadashive who retired as a Manager Dena Bank Lucknow.

20. It is the contention of the authorized representative for the claimant that to prove the charge against the workman the burden lies on the opposite party. There is a force in the contention. Initially the burden lies on the management.

21. The management has served the charge sheet upon the workman which contains 21 charges. Paper No. 57/2-10 is the original charge sheet which shall form part of this award. I would like to reproduce the contents of charge no.1-

“that while working as a cashier-cum-clerk at our Kanpur Branch during August 83 to April 84 you were attending to S/B Accounts counter as ledger keeper. During the course of your duties you fraudulently and with malafide intention of cheating the bank made fictitious credit entries in certain saving bank accounts. These amounts were later withdrawn by you in collusion with the holders of the respective saving bank accounts thus defrauding the bank.”

22. That on 15-9-83 a cash cheque for Rs. 900 drawn on saving bank account no. 1405 of Sri Satyendra Singh bearing the folio number written by you and your initials

for having debited the amount in saving bank account No. 1405 was sent by you to the passing officer for payment. The cheque was passed by the passing officer and the payment made by the cashier. The amount of the cheque was in fact was not debited to the saving bank account No. 1405 by you. While writing the saving bank subsidiary register for the day you did not indicate the payment of Rs.900 made in S/B account no. 1405. However the same was included in the payment of Rs. 100 made in saving bank account No. 1939 which was deliberately shown as Rs. 1000 so that the day book could be balanced. You also removed/destroyed the relevant cheque from the bank record.

23. Now it has to be seen whether the opposite party has been able to prove the aforesaid charge. Opposite party has produced the evidence of MW. 2 Manohar Sadashiv on oath who is a retired manager as well as documentary evidence in the shape of subsidiary register cashier cash scroll, register officer cash scroll etc. In the examination in chief M.W. 2 stated on oath that he was posted at Dena Bank Kanpur during the period 1983 and on wards. He was posted as an officer. During his period Sri Arun Kumar Singh (CSE) was posted at Kanpur branch of Dena Bank. He used to sit at Saving Banks Account Section of the branch. His job was to make relevant entries in the ledger after debiting the amount and he used to put his initials on the cheque, thereafter, he used to send the cheque to him for verification. His job was to make an entry of deposit in the ledger. His job was also to write the subsidiary register in the evening. If it was found that there is a less balance in the account of some account holder then after checking the ledger he used to return the cheque to the customer. He stated that the opposite party has filed subsidiary register. In this register the entries dated 15-9-83 has been made by Sri Arun Kumar Singh. At page number 171 there is an entry of Rs. 1000 encircled in red ink in the court. Factually this was an entry for 100 only, as there was a cheque of Rs. 100 but Sri Arun Kumar Singh made it to read out as Rs. 1000 where as in fact a cheque for Rs. 100 was received in S/B Account Number 1939. CSE after putting his signature on the cheque sent the same to him for passing. After scrolling the entries in the cash scroll were made by him which is at page No. 114 (66/1222). I have examined the original register which is before me and I find that in this register against account No. 1939 there is an entry of Rs. 100 only. This entry has been made by M.W. 2. After doing this entry and passing the cheque he sent this cheque to the cashier to make the payment. On the same day the CSE has sent another cheque for Rs.900 for passing the same against account No. 1405. M W. 2 has made the relevant entries in the same register at serial no. 90 at page No. 114, which is of Rs. 900. After passing the cheque he sent this cheque to the cashier for making the payment. Opposite party has also filed the cashier's cash scroll for the period 25-9-82 to 21-10-83. At page No. 357 dated 15-9-83 there is an entry of Rs. 900 against account No. 1405.

It is stated by him that this cash scroll register entries were made by the then cashier Sri Dharmveer Srivastava. He has worked with Sri Srivastava for more than four years; therefore he recognizes his hand writing. CSE who has prepared the subsidiary on that day there is no entry of Rs.900 in SB Account No. 1405 on 15-9-83. There is no mention of account No. 1405 in any of the entries of the subsidiary register. Witness has further stated that to make an adjustment of Rs. 900 CSE made an entry of Rs. 1000 in place of Rs. 100 in account no 1939, which was done with the purpose that the day book could be tallied in the evening. These balancing have to be done from officer cash scroll and paying cashier cash scroll register. If CSE had not made an entry of Rs. 1000 in place of Rs.100, then the account of the branch could not have been tallied in the evening of 15-9-83, and there could be a difference of Rs.900. Witness goes on to state that in the evening the cashier used to send the cheque to the relevant departments and this cheque of Rs.900 was sent by him to Sri Arun Kumar Singh. Sri Arun Kumar Singh destroyed /misplaced of this cheque of Rs.900. He further stated that all the vouchers and cheque which were dealt with by the branch on previous working day were handed over to the Daftry in the morning on the next working day to bundle the same. The cheque of Rs. 900 was not found in this bundle.

24. Similarly the management has adduced evidence on charge No. 3 which is being reproduced that is on 3-11-83, a cash cheque for Rs.1000 drawn on SB Account No. 1405 of Sri Satyendra Singh bearing the folio number written by you and your initials for having debited the amount in saving bank account number 1405 was sent by you to the passing officer for payment. The cheque was passed by the passing officer and the payment made by the cashier. The amount of the cheque was in fact not debited in the saving bank account No. 1405 by you. While writing the saving bank subsidiary register of the day you did not indicate the payment of Rs.1000 made in SB Account No. 1405. However to enable the day book to be balanced you increased the total of cash entries in the debit side of the subsidiary register by Rs. 1000. You also removed or destroyed the relevant cheque from the bank record.

25. In this regard management has also filed relevant subsidiary register and other registers. These registers have been examined by me. At page No. 50 (66/248) there is no entry relating to account No. 1405. M.W. 2 stated on oath that these entries are in the hand writing of Sri Arun Kumar Singh. At page No. 183 (66/1291) of the officers cash scroll register, there is an entry of Rs.1000 against saving bank account No. 1405 at serial, no. 43. He stated on oath that such kind of entries are entered into the relevant register when the clerk who is sitting at the saving bank counter sent the cheque after putting his folio and initials and remits the same to the passing officer. This officer cash scroll dated 3-11-83 is written by Sri P. D. Aggrawal

Accountant of the branch, because he may had been on leave on that day or some other work might have been assigned to him, therefore, Sri Aggrawal used to look after his work.

26. Witness of the bank has further stated that at page No. 16 (66/893) Cashier's Cash Scroll in original is before him. The entries on page No. 16 are in the hand writing of Sri D.V. Srivastava. There is an entry of Rs. 1000 against account No. 1405 at serial No. 43 but Sri A K Singh did not make any entry in these subsidiary register of Rs. 1000 on 3-11-1983. He stated that at page No. 51 the CSE increased the total of Rs. 15316 to Rs. 16316 so as to enable the balance tallied on 3-11-83. These entries have been encircled in red ink in the record of the court.

27. Similarly on charge No. 4 all the relevant registers have been produced and examined by me. He stated that at page No. 59 (66/257) dated 11-11-83 there is no entry of Rs. 2000 against account No. 1405. He specifically stated that these entries are in the hand writing of Sri Arun Kumar Singh. He used to work with him so he is able to identify his hand writing. At page No. 59 total of all the entries comes to Rs. 10350 whereas Sri A K Singh has shown a total of amounting to Rs.12350.

28. It may be pointed out that the contesting parties to the present dispute after examining the records produced as evidence have agreed that an entry of Rs.12350 is appearing in the register instead of 10350. Witness has further stated that he has before him officer scroll register dated 11-11-83 which is written by him. At page No. 66/1299 at serial No. 13 there is an entry of Rs. 2000 against SIB Account No. 1405. This entry was made by me in the register when Sri Arun Kumar Singh has sent the cheque for passing of Rs. 2000 and thereafter after passing the aforesaid cheque the entries for Rs. 2000, was posted by me.

29. He further stated that whenever cheque is presented before the clerk-cum-cashier he made an entry and signed the same and sent it before me for passing the same, the cheque were used to be passed for payment by me only after verifying the signatures of the account holders appearing in the specimen signature cards maintained by the bank and the signature of the clerk. He used to pass the cheque only when there is the signature of the clerk on the cheque and the signature of the account holder tallies with the specimen signature card of the account holder and thereafter he used to send the same to the paying cashier for payment after putting stamp and signature over the same.

30. He stated therefore Rs. 2000 which was withdrawn on 11-11-83 from saving bank account No. 1405, which has an entry in the officer cash scroll at page No. 191 and the corresponding entry in the cashiers cash scroll, but there is no entry made by Sri Arun Kumar Singh in the subsidiary register on 11-11-83 at page No. 66/257. Whereas the balance as per record of the bank at the closing hours was

Rs. 10350 which was increased to Rs.12350. So that the day book of the day i.e. 11-11-83 could be tallied and the cheque which was of the date of 11-11-83, could be passed and the payment thereof be taken from the bank.

31. Similarly there is an evidence regarding Saving Bank Account No.1203. It is stated that Rs.7000 was drawn from this account and there was an entry of Rs.7000 made by the delinquent employee but later on after making an over writing it was shown as Rs. 9000 . MW. 2 has stated that the corresponding entries in the officers cash scroll and cashier scroll are of Rs.7000 . He recognizes the hand writing of Sri C. R. Shah who was the then cashier.

32. I have examined the subsidiary register. At page No. 94 (66/292). There is an over writing of Rs.9000, whereas according to the management it should have been 7000 . It relates to account no. 1203. He specially stated that this over writing has been done by the delinquent employee. He has also stated that the delinquent employee used to put his signature on the back of the cheques. He also stated that saving bank account no.1405 holder was a friend of Sri A K Singh the CSE. It is further stated by the witness that Sri Arun Kumar Singh (CSE) after getting signed cheques from his friend had withheld the cheques with him. These cheques were filled by him in his own hand writings.

33. He further stated that a cheque of Rs.2000 from S/B Account No.2262 was sent by the CSE (for short Charge Sheeted Employee) for passing the same, but there is No entry in the ledger of account holder for Rs. 2000. Whereas there are corresponding entries by the cashier in the cashier scroll of Rs.2000 and in the officer cash scroll made by me. The cheque was sent to Sri A K Singh to make an entry in the subsidiary register but CSE did not make entry in the account No. 2262 page No. 66/314 (page No. 116). But instead of he made of entries of Rs. 4000 in place of Rs. 2000 so as to enable the day book may be tallied.

34. Regarding Charge No. 8 it is stated that a cheque of Rs.1000, was received in account No. 2262 CSE. The CSE sent this cheque to me. After receipt of the cheque I verified the signature from the specimen signature of the account holder and found that the cheque is in order and therefore, passed the same for payment. Thereafter I made an entry in the officer cash scroll for Rs. 1000. I sent it to the cashier. Both the cash scroll register maintained by me as well as by the cashier of the branch have a corresponding entry of Rs. 1000. The entries were in the hand writing of Sri D V Srivastava the then cashier who had worked with him. This cheque was sent to the CSE so that he should make an entry in the subsidiary register, but he did not make an entry of Rs.1000 in the aforesaid account, instead of it he increased the total of the entries from Rs. 10750 to 11750 so that the day book can be balanced. This subsidiary register has been written by Sri CSE.

35. Similarly the witness has stated on oath and produced evidence relating to some of the other charges which are of the similar nature.

36. It has been contended before me by both the parties that if the management has been able to prove a few charges or one or two charges then the claimant will accept the allegation of the opposite party, because the contention raised by the claimant side are similar in nature in respect of all the charges.

37. Similarly I am not inclined to reproduce the evidence of the witness on the other charges which are similarly to that of charges and evidences thereon have been dealt with by me hereinabove.

38. There is one more contention and evidence adduced by the opposite party against the CSE. It is stated that during the course of enquiry the CSE has admitted his guilt and in lieu of that he has deposited an amount of Rs.8000 vide his letter which in original and filed by the opposite party, which is lying in subsidiary registers period 2-1-84 to 7-5-84. M.W: 2 has specifically stated on oath that CSE has deposited the amount in lieu of misappropriated amount and he has written a letter.

39. I have examined this letter of the CSE. This letter is from CSE addressed to the Manager Dena Bank. The contents are that he is remitting Rs. 8000 which may be deposited.

40. Now the contention have been raised by the claimant that subsidiary register is a fictitious document as it does not contain signature of the officers. It is a planted one.

41. The next contention is that the ledger folios in original have not been produced in original. These subsidiary register does not carry any weight in evidence. One more important contention he has raised that he was not working at Saving Bank Ledger Counter at that time.

42. I have dealt all these contentions each and every one thoroughly in the light of the evidence.

43. I would like to say that it is not a criminal trial though it is a trial. Here the management is not supposed to prove the charge beyond doubt. Here if the evidence is such which may be believable and if the finger points towards the guilt or the misconduct of the CSE then it is the discretion of the management to keep such an employee in the employment or throw him away.

44. There are several subsidiary register and not a single register. It is not on a plain sheet. It is a printed register of Dena Bank and it contains the paging number on every sheet though there is a lacking of the signature on the pages.

45. Opposite party has argued that these register are required in day to day working and there is no such hard and fast practice that there should be an initial of officer on each working day.

46. Now the authorized representative for the claimant has shown his doubt regarding the testimony of the management witness, alleging that structure has been passed in criminal court against this witness, therefore, his testimony should not be believed. I have examined the judgment of the criminal court. The accused who is CSE has been given benefit of doubt in the trial. Similarly the suggestion has been given by the claimant to the witness he is deposing falsely and malafidely against the CSE. This suggestion has been vehemently denied by the witness. Moreover, he stated that whenever he was not present in the branch, the CSE has committed same kind of misappropriation of banks fund, in the presence of other officers of the branch, names of them have been disclosed by the management witness.

47. A lengthy cross examination has been made by the claimant from the witness of the management.

48. First of all I have examined whether or not there was any animosity against the CSE of the witness. Whether this witness was having any hand in this fraudulent transaction and to save him he may be implicating the CSE. I do not find any such positive evidence which may indicate that the witness was having hand in the fraudulent transactions mentioned in the charge sheet or he was inclined to inculcate the CSE in a false case. I also find that M.W. 2 is not an interested witness. He has personally seen and observed the working of the bank day to day during the period the incident took place in the branch where CSE was also posted. He has not only recognized the hand writing /numerological of the CSE but-also of different officers and official working at the branch during the relevant period the alleged incident took place.

49. Therefore, question of calling the report of hand writing expert, in the facts and circumstances of the case as narrated by me does not arise at all.

50. I would like to say when the opposite party produced this evidence to prove these charges; it was incumbent upon the CSE to have come in the witness box before the tribunal to controvert the evidence of the management witness. But this having not been done by the CSE, therefore, the evidence of the opposite party cannot be discarded.

51. During arguments also I inquired from the learned auth. Representative for the claimant whether the CSE would like to come in the witness box and say that the hand writings appearing on various subsidiary registers are not written by him CSE. He simply replied that the burden lies on the opposite party. I have already said that it not a criminal trial. Rather it is disciplinary case, where the case, as per settled legal position, are required to be decided only on the basis of probability and preponderance of evidence available on the record of the file.

52. I have examined the statement of the claimant which was given by him before the tribunal on the point of preliminary issue to decide the fairness of the enquiry. There is not a single word in his evidence that MW.2 Sadashiv was having any animosity against him or he was involved in the fraudulent transaction and to save himself he is implicating. He cannot say that he did not get the opportunity to make statement on oath before the tribunal or produce any evidence in defence before the tribunal. There is a difference in raising the arguments by the representative for the claimant and putting a question before the witness in comparison to a statement made by a witness. If CSE had been produced in witness box and made statement on oath then he may have been subjected to cross examination and the true facts would have come before the tribunal. It is also expected from the claimant that he will come with clean hands before the tribunal. He cannot take such type of shelter which can be taken by an accused in a criminal proceedings, even in criminal proceedings an accused is subjected to thorough examination under section 313 Cr. P. C.

53. Here the victim did not enter in the witness box knowingly or otherwise to say that he was not sitting on all the relevant dates at the saving banks ledger counter, where as there is a positive, specific oral as well as documentary evidence in the shape of subsidiary register adduced by the opposite party that the CSE was working at the Saving Bank Counter and was looking after the work to make entries in the said ledger. I think the plea taken by the CSE that he was working at the seat of invent bill collection, is after thought. This suggestion has been refuted by M.W. 2 vehemently. It does not appear that he has taken this plea at the initial stage of enquiry. Moreover when there is positive evidence then the burden has shifted on CSE to prove that he was working at the seat of invent seat collection.

54. In this reference he could have summoned the concerned register of invent bill collection so as to establish the fact whether he worked on the seat of invent bill collection. Whatever questions have been put to the witness regarding whether he can state in the court that who the employee was working on a particular seat. The reply given by the MW.2 is that he is not able to reply the question verbally but he can state after seeing the record and in my view he is a witness of facts as well as records. Whatever the dates he has informed after seeing the records and relevant register. The A.R. of the claimant has posed a generalize form of question. It is the duty of the tribunal to read the statement of the witness as a whole. Therefore on this point I find no force in the contention of claimant for the findings recorded by me above, hence rejected.

55. It has not been disputed by the claimant that misappropriation of fund has not been taken place at the

branch of the bank. The delinquent employee has not disputed the fact that he was not present on the date when misappropriation of fund took place.

56. Now I put a question to myself, whether the evidence of Cash Scroll of cashier, Cash Scroll of Officer of the branch and subsidiary register which were filed in original and was in a printed format and being maintained in due course of business and the evidence of a letter written by the CSE to the management making a deposit of Rs. 8000 after initiation of proceedings, whether this type of evidence could be ignored or thrown away by the tribunal coupled with the direct evidence of a witness M.W. 2.

57. The contention of the claimant that the letter which is in the hand writing of the CSE has been filed by the management at later stage without the knowledge of the claimant. I do not find any force in this contention. The contents of this letter has also been put to w.w. 1 in the cross examination where he did not give any satisfactory explanation either in his examination in chief or cross examination as to why he did make a deposit of Rs. 8000 if he had not committed any misappropriation. Burden lies on CSE to explain as to under what circumstances he had deposited Rs. 8000 with the branch manager without specifying the account number in the letter so called. Therefore, there is no dispute in the authenticity of this letter tendered by the delinquent employee.

58. It has come in evidence that mostly the transaction in account No. 1405 has taken place, account holder of which was the friend of the delinquent employee.

59. M.W. 2 has stated that the practice of passing the instruments at the branch during the relevant period was that whenever any cheque or voucher was brought directly by the clerk of the branch before the passing officer of the branch, it was never impressed to know about the token issued in the said transaction for otherwise all times the cheques or vouchers were passed by the officer without forcing of token in good faith. Like was done in the case of the CSE and the passing officer had never asked for the token issued to the customer before passing of the cheque or voucher. Therefore, token book has not been produced it is not prejudicial to the CSE.

60. There is also a contention of the authorized representative for the claimant that original Ledger folios have not been produced, photocopies which were produced during inquiry proceedings as well before this tribunal are in the loose sheet form. They are not in a consolidated register shape.

61. I have given due thought to this contention. Opposite party has filed an affidavit before the tribunal stating there in that the originals of the documents have been destroyed.

62. I have pondered over it. The evidence in the ledger folio is not in the shape of positive evidence because it is not the case of either of the parties that the entries were

made in the ledger folio but it is the case of the opposite party that the CSE who was sitting at the counter and was supposed to make the entries of the credit and debit in the ledger folios in the concerned account holders did not make the relevant entries at the relevant period.

63. The A.R. for the management stated that certain documents which were filed before the criminal court have also been found missing. They have also contended that when the management has filed the documents before the enquiry officer the DR of the CSE was asked to admit or deny the documents. The DR of the CSE has accepted the authenticity of the documents filed by the management before the enquiry officer and had not raised any objection to the same. These documents are from Ext. CN/MD-1 to CN/MD/54 which has been filed by the management.

64. Therefore, from the foregoing discussions the tribunal find that the evidence of the M.W. 2 is natural demonstrating the practice and procedure of the bank at the relevant time. The workman cannot be allowed to take any benefit for breach of procedure of the bank.

65. The bank is a financial institute run at the utmost trust of the constituents of the bank and if the trust of the financial institution is shake end by male practice of its employee who has been found guilty for the same in disciplinary action he cannot be allowed to take any advantage against the actions of the opposite party bank on the ground of technical or mechanical defects.

66. If a reference is made to the tribunal by the appropriate government under the provisions of the Industrial Disputes Act, 1947, it is obligatory on the Tribunal to decide the matter in totality on merits so as to avoid any further dispute in the matter for all times come in future.

67. From this point of view the tribunal finds that the management has been able to prove the charges against the workman.

68. Therefore, the tribunal is not inclined to interfere with the decision either of the disciplinary authority or of the appellate authority, because there is no plea from the side of the claimant to interfere with the punishment order by the tribunal under section 11-A of the Industrial Disputes Act.

69. Therefore considering the overall circumstances of the case, the tribunal is of the opinion that the action of the opposite party in removing the workman from the service of the bank is held to be wholly legal and justified and as the workman has absolutely failed to make out any case in his favour, therefore, he is held entitled to no relief.

70. Reference is answered accordingly against the workman.

RAM PARKASH, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2011

का.आ. 3223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोलकाता पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 17/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-32011/2/2007-आईआर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 11th October, 2011

S.O. 3223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of Kolkata Port Trust and their workmen, received by the Central Government on 11-10-2011.

[No. L-32011/2/2007-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 17 of 2007

Parties : Employers in relation to the anagement of
Kolkata Port Trust

AND

Their workmen.

Present : Mr Justice Manik Mohan Sarkar,
Presiding Officer

Appearance :

On behalf of the : Mr. G. Mukhopadhyay,
Management Industrial Relations Officer.
On behalf of the : Mr. A. Bhadury,
Workmen Executive Committee Member
of the Workmen Union.

State : West Bengal **Industry:** Port & Dock.
Dated : 15th September, 2011.

AWARD

By Order No. L-32011/2/2007-IR (B-II) dated 14-7-2007 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Kolkata Port Trust in imposing a punishment of removal from service w.e.f 07-4-2006 on Shri Bishu Routhan ex-Lascar, Gr. I is legal and justified? If not, to what relief the workman is entitled?"

2. When the case is called out today, Mr. G. Mukhopadhyay, Industrial Relation Officer is present on behalf of the management. Mr. A. Bhadury. Executive Committee Member of the Workmen Union is present on behalf of the workmen.

3. One application has been filed today by the workman concerned through his authorized representative, Mr. Bhadury and in the said application it is stated that the workman concerned does not want to proceed further in the present dispute and to treat the same as disposed of for non-prosecution. The workman concerned is present and he has stated that he does not want to proceed in the matter any more.

4. In that view of the matter, the present reference is disposed of for non-prosecution.

An Award is passed accordingly.

Justice MANIK MOHAN SARKAR, Presiding Officer
Dated : Kolkata,
The 15th September, 2011

नई दिल्ली, 11 अक्टूबर, 2011

का.आ. 3224.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ संख्या सीजीआईटी ऑफ 1106/2004 (आईटीसी सं. 8/1999 ओल्ड) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-12012/237/1998-आईआर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 11th October, 2011

S.O. 3224.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. CGIT of 1106/2004 (ITC No. 8/1999 Old)] of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 11-10-2011.

[No. L-12012/237/1998-IR(B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : BINAY KUMAR SINHA, Presiding Officer,
CGIT-cum-Labour Court,
Ahmedabad.

Dated 17th August, 2011

Reference: CGITA of 1106 of 2004 (New)

Reference: ITC. 8/1999 (Old)

Regional Manager,
Dena Bank, Regional Office,
Laxmi Chambers, 1st Floor,
Station Road, PB No. 16,
Bhuj (Kutch) Bhuj-370001.

...First Party

And

their workman

Smt. Manjulaben D. Mochi,
Plot No. 187, Ward 11-A,
Zulelal Society, Bharatnagar,
PO. Gopalpuri, Gandhidham- 370201
Kutch (Gujarat)

...Second Party

For the first party : None

For the second party workman : D. P. Parekh, Advocate

AWARD

A dispute arose between the employer in relation to Management of Dena Bank and their workman Smt. Manjulaben D. Mochi and on failure of efforts of conciliation, the conciliation officer sent failure report to the appropriate Government, the Government of India, Ministry of Labour and Employment/Shram Shakti Bhavan, Rafi Marg, New Delhi-110001, by its order No. L-12012/237/1998 IR (B-II)) dated 26-3-1999/30-3-1999, in exercise of power conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act 1947, referred the dispute for adjudication under the schedule as follows:-

SCHEDULE

“Whether the action of the management of Dena Bank, Bhuj/Gandhidham regarding denial/not taking on Bank’s services as a full time subordinate to Smt. Manjulaben D. Mochi, Presently working as Part Time Cleaner is just, valid and legal? If not, what reliefs the workman is entitle for and what directions are necessary in the matter?”

2. The notices issues to both parties and for filing a statement of claim/written statement. The second party workman appeared before the Court of Industrial Tribunal, Rajkot when this case was pending therein and filed statement of claim engaging her lawyer Mr. P.V. Gogia and Mr. R.V. Gogia of Rajkot. However the first party management of Dena Bank did not appear in this case when the matter was pending before the Industrial Court, Rajkot. The record of this case subsequently was received on transfer from Industrial Court Rajkot in the month of November 2010. Thereafter from this court again notices were issued to both sides, but in spite of notices the first party again failed to appear in the court either itself or

through its lawyer. Whereas the second party Smt. Manjulaben D. Mochi appeared in this Court with her lawyer for carrying out her grievances against the management of Dena Bank in this case. On the other hand in spite of notices the first party neither appeared nor filed written statement to the statement of claim of the second party workman. The case was then fixed for leading evidence by the second party and the second party lead her oral evidence by way of affidavit and also produced documentary evidence in support of her claim made in the statement of claim.

3. The case of second party workman as per statement of claim at Ext. 3 is that she was engaged from 1-1-1987 as a part time cleaner by the management of Dena Bank and was allowed to continue in the employment. During the course of her continuous service as a part time cleaner, she was engaged by the Bank as a full time messenger w.e.f. 1-12-1993 and she then worked continuously as a full time messenger upto 10-3-1998. Thereafter her service conditions were changed by the management of Dena Bank as w.e.f. 10-3-1998 placing her again as part time Messenger from full time messenger. Further case is that she completed more than 4 years as a full time Messenger from 1-12-1993 to 10-3-1998 and so she is entitled to be regularised in service, as a full time messenger. Whereas the juniors to her were appointed as a full time subordinate but her case was not considered by the first party management of Dena Bank. Further case is that she is a scheduled caste candidate, and she has already met the criteria for being regularised as full time messenger and she has right to be regularised and confirmed as full time messenger w.e.f. 1-12-1993 in view of the service condition of workman in Bank and also as per clause 18 (4) of the 5th P.B.S. Bipartite Settlement dated 10-4-1989 and also in view of earlier Bipartite Settlement dated 10-10-1966 and the further Bipartite Settlement dated 31-10-1979. On the basis of such pleadings relief has been sought for that the order of the first party Bank regarding termination of the service of the workman for full time messenger to part time messenger w.e.f. 1-12-1993 is illegal, bad in law, ineffective and contrary to the principles of natural justice. Further reliefs has been sought for to regularise the second party workman as a full time messenger w.e.f. 1-12-1993 with continuity of service and with all consequential benefits, and the workman be treated as continue for all purposes with full backwages. And other relief to which the second party workman may deem entitled.

4. Since the first party did not put up any pleadings for considering its rival case against the statement of claim of the second party workman at Ext. 3 and since the first party workman has not appeared to contest this reference case so, in fact there is no need for formulation of necessary issues for consideration and determination. However following points are taken up for consideration in view of

the pleadings of the second party workman and the documents produced at Ext. 8 and the oral evidence of the workman at Ext. 10.

POINTS

- (I) Whether the reference is maintainable?
- (II) Whether the second party workman has legal right to be treated as full time messenger of the first party Bank from 01-12-1993?
- (III) Whether the action of the management of Dena Bank in not treating the second party workman as a full time messenger w.e.f. 10-3-1998 is justified and proper?
- (IV) What relief the second party workman is entitled in this case?

5. Point No. I

The reference is maintainable since the second party is the workman of the first party management of Dena Bank and the reference has been sent for adjudication by this Tribunal.

6. Point No. II, III, IV

Ext. 8 series are the documents of the first party produced and relied upon by the second party workman. Ext. 8/1 is the memorandum of Dena Bank dated 6-6-1989 regarding fixation of working hours and wages of part time cleaners as per carpet area of branches. Ext. 8/2 is the letter of Bhuj Regional Office of Dena Bank dated 15-9-1990 issue to the manager of Dena Bank all branches under Bhuj Region regarding vacancies of subordinate at proposed Nalia (Tal. Abdasa), Mota Kandagara (Tal. Mundra) and Bhirandiyara (Tal. Bhuj) regarding creating of one vacancy each of subordinate that at the three new branches inviting full details and Bio-data from the part time cleaners for their transfer as subordinate full time staff to those places. Ext. 8/3 is the application of the second party workman Manjulaben D. Mochi addressed to Branch Manager, Dena Bank, Gandhidham regarding her absorption/transfer as full time subordinate staff. Her application is dated 21-3-1998. Ext. 8/4 another application dated 7-4-1998 of the second party workman addressed to the Branch Manager, Gandhidham Branch of Dena Bank. Ext. 8/5 is yet another application/representation of the second party workman addressed to the Branch Manager, Gandhidham. Ext. 8/6 is the letter dated 25-2-2000 of the regional office, Dena Bank, Bhuj addressed to Smt. Manjulaben D. Mochi (second party workman) on the subject of the conversion of part time cleaners into full time subordinate from which the management of Bank informing regarding her conversion to the full time cleaners on Dayaper Branch and also informing regarding payment of full time from the date of reporting at Dayaper. Ext. 8/7 is the relieving order of Manjulaben dated 3-3-2000 by branch Gandhidham of Dena Bank through which the second party workman was relieved from the Gandhidham branch from 3-3-2000 asking the second party for resuming

her duties to Dayaper Branch from next working days. Ext. 8/8 the letter of Regional Office Dena Bank, Bhuj dated 5-5-2000 addressed to the second party workman regarding fitment on conversion from part time cleaner to full time subordinate mentioning fitment as on 3-3-2000 Rs. 1870, next annual increment due on December, 2000 and date of annual increment in December, every year. Ext. 8/9 is the letter of Branch Manager Dena Bank, Dayaper Branch dated 30-6-2006 addressed to the second party Smt. Manjulaben D. Mochi regarding her retirement from Bank service on 30-6-2006. Ext. 8/10 is the copy of the School Leaving Certificate of Sardar Vallabhbhai Patel Gujarat Vidyalay, Gandhidham (Kutch). Besides relieving upon those documents discussed above. The second party workman Smt. Manjulaben D. Mochi in her examination-in-chief as per affidavit at Ext. 10 has stated that she was appointed as part time sweeper at Gandhidham (Kutch) Branch from very date of Bank's opening on and from 11-11-1973 at the initial stage of working, no written order was issued by the first party and that the first party issued a letter in 1989 for pay and other benefits w.e.f. from the year 1987 vide its letter dated 6-6-1989 (Ext. 8/1). In her evidence the second party has further claim that she worked as a full time messenger in the Gandhidham Branch from 1-11-1993 to 10-3-1998 on verbal orders of the Dena Bank Manager and she worked for about 4 years 3 months and 9 days duration in the branch satisfactorily, as per Bank's rules and regulations. But, for that period she was not paid by the Bank authority, at the scale of full time messenger, prevailing in Bank at that time. And that there was no any complain against her from neither public nor Bank management. But even though not considering her faithful and loyal service, the management of Bank wrongly reverted her again as a part time cleaner w.e.f. 10-3-1998 by verbal order only without any reason. The second party workman in her evidence has also supported the circular dated 5-9-1990 Ext. 8/2 for filling up full time subordinate staff for Station Nalia, Tal. Abdasa, Mota Kandagaru Tal. Mundra and Bhiradia, Tal. Bhuj. But the management of Dena Bank ignored her case though she was senior most staff of the Bank and the Junior part time cleaners to her where promoted and posted at that centers as a full time subordinate, without considering service rules and regulations prevailing in practice and ignoring also her seniority. Further evidence is that she (second party workman) worked as full time subordinate staff at Dayaper Dena Bank Branch from 3-3-2006 to 30-6-2006 and retired on 30-6-2006 on superannuation, after 33 years of satisfactory and loyal service. She claim for her entitlement for promotion in cadre of full time subordinate staff, w.e.f. 01-12-1993 according to Bank's rules and regulations prevailing at that time but by not giving the full time subordinate staff a huge loss has been caused to her in pay and other benefits allowances and retiral benefits also has been affected. The evidence of the second party workman remained intact. The management of first party

Dena Bank did not avail any opportunity of cross-examination of the second party workman the evidence of second party was closed. Thereafter the stage adducing the evidence of the first party was also closed.

(7) From perusal of the evidence both oral and documentary adduced on behalf of the second party workman, it is proved that the management of Dena Bank (first party) was taking the work from the second party workman Manjulaben D. Mochi as a full time messenger w.e.f 1-12-1993 but was not providing the scale of pay of full time messenger to the second party workman. There were 3 vacancies of subordinate staff at opening of new branches at 3 places as per Ext. 8/2, but the first party did not consider the case of second party for transferring her as a subordinate full time staff to any of these centers though she was senior most part time cleaner, thus the first party Bank has denied the benefit which was to be given to the second party. It is also proved that the management of Dena Bank was taking the work of full time subordinate staff from the second party workman since 01-12-1993 but her case was only considered much subsequently on February, 2000 vide Ext. 8/6 and putting her revised fitment scale on conversion into full time subordinate from 03-3-2000 only. Whereas as per ex-parte evidence of the second party she was entitled for full time subordinate scale from 01-12-1993 which was denied to her even on creating 3 vacancies on opening of 3 new branches for subordinate staff to be filled up from the part time cleaners. So, the management of first party Dena Bank was not justified in denying/not taking in Bank service as full time subordinate to Smt Manjulaben D. Mochi w.e.f. 01-12-1993. So point No. II is answered in affirmative and point No. III is answered in negative and point No. IV is answered in favour of the second party workman.

(8) It is obvious that now the second party workman has retired from the Bank service on her superannuation on 30-6-2006 and she has been provided retiral benefits according to her evidence from part time cleaners to full time subordinate w.e.f. 3-3-2000 but in fact she is entitled for full time subordinate scale from 01-12-1993 in view of the ex-parte evidence.

(9) This reference is allowed ex-parte. Second party workman is found entitled for conversion as subordinate staff w.e.f. 01-12-1993 and the second party workman is also found entitled for the consequential benefits from 01-12-1993 till her superannuation on 30-6-2006. The first party management Bank is further directed to regularise the second party as full time messenger w.e.f. 01-12-1993 with continuity of service and with all consequential benefits till her retirement. The first party Bank is directed to implement the award within 3 months of this order failing which the consequential benefits so calculated will also carry interest at rate 9% per annum.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2011

क्र.आ. 3225.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 745/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-12012/169/1997-आईआर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 11th October, 2011

S.O. 3225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 745/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workman, which was received by the Central Government on 11-10-2011.

[No. L-12012/169/1997-IR(B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 745/2005

Instituted on 2-9-2005

The General Secretary,
Punjab and Sind Bank Organization,
228/10, Mohalla Abbian, Path,
Amritsar.

... Applicant

Versus

The Zonal Manager,
Punjab and Sind Bank, Zonal Office,
12, Lawrence Road, Amritsar.

... Respondent

APPEARANCES:

For the workman : Sh. Sandeep Bhardwaj
For the Management : Sh. J.S Sathi Advocate.

AWARD

Passed on 9 Sept. 2011

Government of India vide Notification No. L-12012/169/97/IR (B-II) Dated 10-2-1998, by exercising its powers under Section 10 sub-section (1)(d) and sub-section (2A) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), has referred the following Industrial dispute for adjudication to this Tribunal :-

"Whether the action of the Management of Punjab and Sind Bank in imposing penalty against Sh. VK Sharma and not paying him wages for the period of suspension from 11-3-1988 to 11-3-1989 with all consequential benefit is legal and justified? If not, to what relief the said workman is entitled?"

According to the claim statement the concerned workman Sh. V.K. Sharma was charge sheeted on 19-1-1988. His reply to the charge sheet was rejected and the enquiry was conducted. The enquiry Officer exonerated him, but the disciplinary authority disagreeing with the report of the Enquiry Officer proposed the punishment of warning. The workman submitted his reply to the show cause notice. But the disciplinary authority imposed the proposed punishment and without issuing a separate show cause notice also disentitled him from any wages accepting the subsistence allowance for the suspension period. The workman preferred an appeal but without success. So, feeling aggrieved with the order of the authorities he preferred a civil suit. The Court found merit in his case but dismissed it on technical ground of limitation. Hence, an industrial dispute was sponsored/ espoused by the Punjab and Sind Bank Staff Organization vide resolution dated 9-6-1996. It has been submitted in the claim statement that the order of the disciplinary authority awarding punishment to the workman is violative of the principles of natural justice as the authority failed to issue a notice to the workman before disagreeing with the findings of the Enquiry Officer nor the workman was asked to show cause why he should not be disentitled from payment of full pay and allowances for the period of suspension. During the period of suspension the workman was not gainfully employed anywhere else. The claimant has prayed for setting aside the punishment order of warning and for treating him on duty for the period of suspension.

The claim was contested by the management and it was contended that after failing in Civil Court the claimant is estopped by the principles of *res judicata* to raise a demand under the Act on the same cause of action. The present reference is not competent. Secondly, the alleged dispute being between the employer and a single individual is not an industrial dispute within the meaning of Section 2(K) of the Act. Thirdly, the concerned employee is not a workman and lastly the dispute raised is highly time barred. On merits it was alleged that disciplinary authority acted well within its jurisdiction in disagreeing with the findings of the Enquiry Officer and in the show cause notice issued to the claimant detailed reasons for disagreement had been given. The reply of the claimant to the show cause notice and other relevant material on record had been duly considered by the disciplinary authority before imposing the punishment. There was no necessity to give second show cause notice. According to the management the claimant is not entitled to any relief.

In support of his case the claimant filed his affidavit and gave statement on oath. Various Annexures mentioned in his affidavit however were not filed by the claimant along with his affidavit. In his statement he had been given time for filing the same but in his subsequent statement dated 31-7-2006 he stated that he had not brought any document and nor he wanted to produce any. On behalf of the management affidavit of Sh. Shamsher Singh Manager Punjab and Sind Bank Zonal Office Bazaar, Amritsar was filed and his statement was recorded. After notice sent by registered post on 29-6-2010, the workman appeared in the case but he neither argued nor submitted any written argument. The management however filed its written argument with a copy to claimant. The case was adjourned to 6-9-2010 for the oral or written arguments of the claimant. On 6-9-2010 the counsel for claimant wanted time for filing the written arguments. The case was therefore adjourned to 8-10-2010 but thereafter on 8-10-2010 and 11-11-2010 none appeared for the claimant, hence, the arguments of the management along with evidence on record were duly considered by me.

The argument of learned counsel for the management is that the claimant had the remedy in the Civil Court as well as under the Act before the Labour Court both. It was for him to choose Forum. But it is not open to him to come to other Forum after failing in the first Forum. Since the claimant had approached the Civil Court for his remedy but failed there hence, now it is not open to him to choose this Forum. The learned counsel has cited the judgment of the Hon'ble Punjab and Haryana High Court in Jagbir Vs. Presiding Officer Industrial Tribunal-cum-labour Court 2001 (2) SCT 803 wherein the petitioner had availed his remedy by filing the civil suit but got it dismissed as withdrawn without seeking permission to file reference before the Labour Court. The Division Bench of the Hon'ble High Court upheld the finding of the Labour Court that petitioner has lost his right to get his remedy under the Industrial Disputes Act.

The learned counsel for the management has also cited All-India General Mazdoor Trade Union Registered Vs. TCIL and others 2000 (1) SCT 277 wherein it was held by the Hon'ble Delhi High Court that once a litigant has chosen one Forum he cannot thereafter look to other Forum provided for the same purpose.

It may be mentioned here that some case law had been filed earlier on behalf of claimant. In State of Maharashtra and others Vs. National Construction Company and another 1996 (1) Bank CLR 399 it was laid down by the Hon'ble Supreme Court that if earlier suit was dismissed on technical ground then Section 11 Expl. IV of the Civil Procedure Code or the principles of *res judicata* will not be applicable on the subsequent suit as the earlier suit had not been decided finally but had been dismissed merely on technical grounds.

The learned counsel for management rightly pointed

out that in that case doctrine of election was not involved and the maintainability of the subsequent suit was in question.

The other case law Smt. Pujari Bai Vs. Madan Gopal (dead) LR's AIR 1989 SC 1764 is about the applicability of the resjudicata in case a writ petition is dismissed in limine or on ground of latches or availability of alternative remedy. I agree with the learned counsel for the management that this case law is also not applicable here as it is a case of election of Forum.

From the above going discussion it is clear that since the claimant has exhausted his remedy in the Civil Court without success, hence, he is not entitled to any relief from this Tribunal. His claim is not maintainable. The claimant is therefore not entitled to any relief from this Tribunal. Reference is answered against the claimant. Let two copies of the Award be send to Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer
नई दिल्ली, 11 अक्टूबर, 2011

का.आ. 3226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 53/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-12011/148/2005-आईआर (बी-II)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 11th October, 2011

S.O. 3226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 11-10-2011.

[No. L-12011/148/2005-IR(B-II)]
RAMESH SINGH, Desk Officer

अनुबन्ध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर

सी.जी.आई.टी. प्रकरण सं. 53/2006

श्री एन. के. पुरोहित, पीठासीन अधिकारी

विज्ञप्ति सं. (रेफरेन्स नं.-L-12011/148/2005-IR(B-II))

दिनांक 15-5-2006

The Secretary,
All Bank Safai Karamchari Sangh,
50/138, Rajat Path, Mansarovar,
Jaipur-302001 (Raj.)

v/s

The Sr. Branch Manager,
Vijay Bank

Ahinsa Circle Branch, C-Scheme,
Jaipur (Raj.)

प्रार्थी की तरफ से : श्री सी. डी. चतुर्वेदी, उपाध्यक्ष संघ

अप्रार्थी की तरफ से : श्री वाई. जेड. वाशिनिक, वरिष्ठ प्रबंधक

पंचाट

दिनांक 12-9-2011

केन्द्रीय सरकार के द्वारा निम्न विवाद औद्योगिक विवाद अधिनियम 1947 की धारा 10 की उप-धारा के खण्ड (घ) के प्रावधानों के अन्तर्गत उक्त आदेश के जरिए न्यायनिर्णयन हेतु प्रेषित किया गया।

“Whether the action of the management of Vijay Bank is discontinuing the service of Shri Anil Kumar as PTS from 31-5-2003 and again from 9-10-2004 and also not providing proportionate scale wages is legal and justified? If not, What relief the claimant to and from which date?”

प्रार्थी के स्टेटमेन्ट ऑफ क्लेम में यह अभिवचन है कि उसने अंशकालीन सफाई कर्मचारी के रूप में दिनांक 8-5-2000 से दिनांक 31-5-2003 की अवधि में बैंक की जयपुर स्थित अहिंसा सर्किल ब्रान्च में कार्य किया। तत्पश्चात् विद्याधर नगर, जयपुर में नई शाखा खुलने पर वहां दिनांक 18-12-2003 से दिनांक 9-10-2004 की अवधि में कार्य किया। प्रार्थी ने अभिकथित किया है कि उसे अधिनियम की धारा 25F की पालना किये बिना क्रमशः दिनांक 31-5-2003 एवं दिनांक 9-10-2004 को सेवा से पृथक किया गया है। प्रार्थी के यह भी अभिकथन है कि उसे सेवा से हटाए जाने के बाद अप्रार्थी बैंक के द्वारा अन्य व्यक्ति को विद्याधर नगर, ब्रान्च में नियोजित किया गया है।

अप्रार्थी पक्ष के जवाब की स्टेज पर प्रार्थी ने एक आवेदन प्रस्तुत कर कहा है कि अप्रार्थी बैंक के द्वारा उनके पत्र दिनांक 14-5-2011 के द्वारा चतुर्थ श्रेणी कर्मचारी के पद पर स्थाई नियुक्ति दे दी है व प्रार्थी ने बैंक की उदयपुर शाखा में दिनांक 31-5-2011 को पदभार संभाल लिया है। दोनों पक्षों के द्वारा हस्ताक्षरित इस आवेदन में यह भी कहा गया है कि दोनों पक्षों के मध्य विवाद का निपटारा हो चुका है। अतः तदनुसार पंचाट पारित कर दिया जावे।

यह स्वीकृत तथ्य है कि प्रार्थी को स्थाई रूप से अप्रार्थी बैंक ने नियोजित कर लिया गया है व प्रार्थी को वांछित अनुतोष मिल गया है व दोनों पक्षों के मध्य कोई विवाद शेष नहीं रहा है।

अतः उक्त परिस्थितियों में विवाद रहित पंचाट पारित किया जाता है।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17(1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

एन. के. पुरोहित, पीठासीन अधिकारी

नई दिल्ली, 11 अक्टूबर, 2011

क्र.आ. 3227.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स और एन जी सी अहमदाबाद तरुण इन्टरप्राइजेज मुम्बई के एम इन्टरप्राइजेज बडोदरा, के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 317/2004 नई नं. 78/2000 पुराना नं.) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-30012/20/2000-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th October, 2011

S.O. 3227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 317/2004 (New) 78/2000 (Old)] of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ONGC Ahmedabad, Tarun Enterprise Mumbai, K M Patel Enterprise Baroda and their workmen, which was received by the Central Government on 11-10-2011.

[No. L-30012/20/2000-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : BINAY KUMAR SINHA, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated 16-9-2011

Reference: CGITA of 317 of 2004 (New)

Reference : ITC. 78/2000 (Old)

1. The Group General Manager (P),
ONGC Ltd., Ahmedabad Project,
Avni Bhawan, Chandkheda,
Ahmedabad (Gujarat).
2. Tarun Enterprise Ltd.,
Kajuvade Chakla, Mumbai.
3. K.M. Patel Enterprise,
Engg. Horticultures,
18, Punch Ratna Enterprise,
Allorapark, Baroda.

... First Party

And their workman

Shri Gabhaji Khodaji Thakor
Through the Union,
General Secretary,

Gujarat Petroleum Emp. Union,
43/46, Gandhivas Naka,
Gujarat Stadium Road,
Sabarmati, Ahmedabad (Gujarat).

... Second Party

For the first party Shri M.K. Patel, Advocate

For the second party through : None

Gujarat Labour Employees Union

AWARD

The Gujarat Employees Union raised the dispute raising a demand for the workman Shri Gabhaji Khodaji Thakor employed as labour (Horticulture) in ONGC Project through its contractor is sham and bogus and that the termination of the concerned workman w.e.f. 20-6-1998 is illegal and the workman is entitled for reinstatement and absorption. Such dispute was raised through the union before the conciliation officer failed and in turn the conciliation officer submitted failure report to the Appropriate Government (Central) and then considering the dispute existing between the management of the ONGC and the Group General Manager ONGC and its workman through union referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) vide order No. L-30012/20/2000/IR(M) by the Ministry of Labour and Employment. Shram Shakti Bhavan, Rafi Marg, New Delhi dated 27-7-2000 by formulating the terms of reference as per schedule.

SCHEDULE

“Whether the demand of Gujarat Petroleum Employees Union, Ahmedabad to declare that the arrangement through which Sh. Gabhaji Khodaji Thakor employed as Helper (Horticulture) in ONGC Ahmedabad Project is ‘Sham and Bogus’ and the concerned workman who has been terminated from service w.e.f. 20-6-1998 is entitled for reinstatement and absorption is legal and justified? If yes then to what relief the concerned workman is entitled to and from which date?”

2. In receipt of the reference case it was registered as reference ITC 78/2000 before the Industrial Tribunal, Ahmedabad and the notice were sent to the parties to this dispute and the notice on the second party was sent on the address of the union through General Secretary. On filing of application on behalf of the union's General Secretary G.S. Parasar for impleading the contractor No. 1 M/s. Tarun Enterprise and No. 2 K.M. Patel contractor in this case. Order was passed for impleading them and thereafter the two contractors were also impleaded as first parties contractors (immediate employer of the workman and the notice were also sent to the newly added contractors. The union by appearing in this reference case with the authority given by the workman to its General Secretary, Honorary President General, Honorary Treasurer to contest this case against the employer and its contractor (first party). In response to notice the first party No. 1 (the principal employer) appeared and executed Vakalatnama

in favour of Shri K. V. Gadhia and Shri M. K. Patel. However the newly added two contractors did not appear in spite of so many notices from the previous courts and even by this tribunal on receipt of this record after transfer as per order No. L-22019/6/20 IRC-2 dated 19-10-2010.

3. Statement of claim was filed by the workman Shri Gabhaji Khodaji Thakor on 01-10-2002 at Ext. 16 and the copy of the statement of claim was also received by the contesting first party No.1 who appeared in this case subsequently vide Ext. 17 documents were submitted on 21-2-2003 with list.

4. The first party No.1 the principal employer also submitted its written statement Ext. 21 and its copy was also supplied to the union. Written statement was submitted by the first party No.1 on 08-4-2004 when the record was pending in the court of Industrial Tribunal at Ahmedabad.

5. Subsequently on receipt of the record as per aforesaid order of the transfer of the Ministry of Labour and Employment, New Delhi, the record was put up on 13-1-2011, the first party was present through its Lawyer whereas the second party was absent, then fresh notice was also issued to the second party workman through General Secretary Gujarat Labour Employees Union on its address of Sabarmati, Ahmedabad, as per Ext. 22 and the date was adjourned for the appearance of second party in response to notice. Even on adjournment on 11-7-2011 the second party remained absent and do not appear in response to the notice on 16-9-2011 the record was put up. Shri K. V. Gadhia and Shri M. K. Patel appeared for the first party No. 1. Whereas the second party either workman or his respective union remained absent case was called out repeatedly and no one turned up on behalf of the second party considering the matter pending since long and also considering that the union became disinterested in making contest in this case in spite of filing statement of claim and the documents and so, it was not desirable to carry on with this case any further and so the following order is passed:

ORDER

Second party workman and his union is absent since long and on repeated call no one turned up on behalf of the second party. So this reference is dismissed for non-prosecution of the second party.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2011

क्र.आ. 3228.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैस्सल ओ एन जी सी अक्लेश्वर इण्डस्ट्रियल सर्विस सुरत के प्रबंधांत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/भ्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1422/2004) को

प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-30012/11/2004-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th October, 2011

S.O. 3228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1422/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **M/s. ONGC Ahmedabad, Industrial Security Service Surat** and their workman, which was received by the Central Government on 11-10-2011.

[No. L-30012/11/2004-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : BINAY KUMAR SINHA, Presiding Officer,
CGIT-cum-Labour Court,
Ahmedabad

Dated 16-9-2011

Reference: CGITA of 1422/2004

1. The Group General Manager,
Ankleshwar Project,
Ankleshwar, Gujarat
2. M/s. Industrial Security Services,
103/113, Omkar Chambers,
1st Floor, Opp. Railway Station,
Surat.

...First Party

V/s

Shri Kanubhai K. Prajapati,
Rmakund Road,
Ankleshwar (Gujarat),
Ankleshwar.

... Second Party

For the first party : Mahendera, K. Patel, Advocate

For the second party : None

AWARD

A dispute arose between employer in relation to the Management of Ankleshwar Project and their workman through its contractor, the matter was brought before the conciliation officer by the workman but the conciliation officer submitted failure report to the Appropriate Government and then the Appropriate Government considering the Industrial Dispute existing between the employers and their workman referred the dispute to this

tribunal for adjudication by order No. L-30012/11/2004 -IR (M) New Delhi dated 14-6-2000 as per schedule.

SCHEDULE

“Whether the action of the Management of Oil & Gas Corporation Ltd., Ankleshwar Project in terminating the services of Shri Kanubhai K. Prajapati ‘Peon’ w.e.f. 10-12-1998 through its contractor M/s. Industrial Security Services, Surat, is legal, proper and justified? If not, to what relief the concerned workman is entitled and what other directions are necessary in the matter?”

2. On receiving this reference notice were sent to both sides the management and the workman. The management of first party No.1 appeared through its Lawyer Shri K.V. Gadhia and Mahendra K. Patel executing the power in their favour at Ext. 3. The first party No. 2, the contractor did not appear. The workman did not also appear in spite of repeated notice. Even after notice was issued to the first party and the workman by this Tribunal on receipt of this record from the transferee Court State Industrial Tribunal, Ahmedabad vide order dated 19-10-2010 of the Ministry of Labour and Employment, New Delhi. The first party No.1 appeared before this Tribunal but neither the first party No. 2, the contractor, nor the second party workman appeared before this Tribunal. Dispute was raised by the workman regarding his termination and the second party workman had to support this reference by filing the statement of claim followed by leading the evidence in this case. But the second party workman appears to have lost interest to carry on with this reference case. The second party workman even has not filed a statement of claim in support of his claim in this case. Whereas on the other hand the first party No.1 principal employer by appearing in this case remained waiting for the statement of claim of the second party workman since long. In this circumstance the following order is passed:—

Record put up on 16-9-2011. On repeated calling out of the case none turned up on behalf of 2nd party workman. 1st party is present through its Lawyer. 2nd party workman has lost interest in this case.

This reference is dismissed for non-prosecution for the second party.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2011

का.आ. 3229.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स श्रीनाथ इन्टरप्राइजेज, कोटा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 35/2003 पुरानी सं.) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-29012/88/2000-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th October, 2011

S.O. 3229.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2003) of the Central Government Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Shree Nath Enterprises Kota and their workman, which was received by the Central Government on 11-10-2011.

[No. L-29012/88/2000-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

JUDGE, INDUSTRIAL TRIBUNAL (CENTRAL) KOTA/RAJ.

Presiding Officer : ANURADHA SHARMA, R.H.J.S.

Reference Case No : IT-35/2003

Date of Institution : 24-9-2003

REF: Government of India, Ministry of Labour,
order No. L-129012/88/2000-IR (M) Dt. 17-10-2000

Reference/Dispute u/s 10(1) (d) of the Industrial Disputes Act, 1947

BETWEEN

Lal Chand S/o. Sh. Kalu Lal Meena,
through the General Secretary,
Pathar Khan Kamgar Union,
Bangali Colony, Chhawani,
Kota.

... App./workman

AND

The Management of : M/s Shree Nath Enterprises,
Chechat.

... Non-App./Employer

PRESENT

Representative of the : Sh. Purshottam Dadich
App./Workman

Representative of the : Sh. D. C. Jain
Non App./Emp.

Date of Award : 5-5-2011

AWARD

The Govt. of India, Ministry of Labour, New Delhi has referred the following Reference/Dispute to this Tribunal for adjudication u/s 10(1) (d) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act') vide Reference/Order Dt. 17-10-2000 :—

“Whether the action of the management of M/s. Shree Nath Enterprises, Chechat in not allowing Sh. Lalchand S/o Shri Kalu Lal Meena to join duty from 1-3-2000 is justified or not. If not, to what relief the claimant is entitled and from which date.”

2. After receipt of the Reference, the notices issued to the concerned parties by the Tribunal as per rules.

3. Heard, the learned Representative of both the parties.

4. The case today is fixed for the evidence of workman, but neither workman is present nor any evidence adduced before the Tribunal. There is no reasonable cause assigned by the learned Representative of workman for the not adducing evidence. The case is fixed for evidence of workman since long and several opportunities have been given, but workman failed to adduce any evidence, so evidence of workman has been closed. Non-App./ Employer did not adduce any evidence.

It was the duty of the workman to prove his case that he was wrongly terminated etc., but he failed to prove his case. Thus, in conclusion, there is no merit in his case and the workman is not entitled to get any relief from this Tribunal.

Award pronounced on this day 5-5-2011 in open Tribunal and sent to the Appropriate Govt., for the publication as per rules.

ANURADHA SHARMA, Judge

नई दिल्ली, 11 अक्टूबर, 2011

का.आ. 3230.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम, भावनगर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 117/2006 नई सं. 1476/2008 पुरानी सं.) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-17011/8/2005-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th October, 2011

S.O. 3230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 117/2006 New 1476/2008 Old) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. LIC of India, Bhavnagar and their workman, which was received by the Central Government on 11-10-2011.

[No. L-17011/8/2005-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : BINAY KUMAR SINHA, Presiding Officer,
CGIT cum Labour Court, Ahmedabad.

Dated 12-9-2011

Reference: CGITA of 117 of 2006 (New)

Reference : ITC, 1476/2008 (Old)

LIC of India,
The Sr. Divisional Manager,
LIC of India, Bhavnagar Division,
Jeevan Prakash, Neelambaug Circle,
Bhavnagar (Gujarat)

... First Party

And their workman
Shri Y. K. Almubrik
Through the Union,
Insurance Workers Organisation,
Bhavnagar Division, C/o. LIC of India,
Neelam Baugh Circle,
Bhavnagar (Gujarat)

... Second Party

For the first party : Shri K. V. Gadhia, Advocate
Shri M. K. Patel, Advocate

For the second party : None
through Insurance
Workers Organisation

AWARD

A dispute arose between employer in relation to the Management of LIC of India and their workman through its contractor, the matter was brought before the conciliation officer by the workman but the conciliation officer submitted failure report to the Appropriate Government and then the Appropriate Government considering the Industrial Dispute existing between the employers and their workman referred the dispute to this tribunal for adjudication by order No. L-17011/8/2005-IR (M), New Delhi dated 21-4-2006 as per schedule.

SCHEDULE

"Whether the industrial dispute raised by General Secretary, Insurance Workers Organisation, Bhavnagar against the management of Sr. Divisional Manager of LIC of India, Bhavnagar over imposition of the penalty of reduction to the lower stage in the time scale by 5 stages on Shri Y.K. Almubrik justified? If so, to what relief the workman is entitled?"

2. On receiving this reference notice were sent to both sides the management and the workman. The management of first party No. 1 appeared through its Lawyer Shri K. V. Gadhia and Mahendra K. Patel executing

the power in their favour at Ext. 4. The workman did not appear in spite of repeated notice. Even after notice was issued to the first party and the workman by this Tribunal on receipt of this record from the transferee Court State Industrial Tribunal, Ahmedabad vide order dated 19-10-2010 of the Ministry of labour & Employment, New Delhi. The first party appeared before this Tribunal but the second party workman did not appear. Dispute was raised by the workman regarding his termination and the second party workman had to support this reference by filing the statement of claim followed by leading the evidence in this case. But the second party workman appears to have lost interest to carry on with this reference case. The second party workman even has not filed a statement of claim in support of his claim in this case. Whereas on the other hand the first party employer by appearing in this case remained waiting for the statement of claim of the second party workman since long. In this circumstance the following order is passed :—

Record put up on 12-9-2011. On repeated calling out of the case none turned up on behalf of 2nd party workman. 1st party is present through its Lawyer. 2nd party workman has lost interest in this case.

This reference is dismissed for non-prosecution for the second party.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2011

का.आ. 3231.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन आयल कार्पोरेशन लिमिटेड मार्केटिंग डिविजन, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 103, 104, 105, 106, 107, 108/2005 को प्रकाशित करती है जो केन्द्रीय सरकार को 11-10-2011 को प्राप्त हुआ था।

[सं. एल-30012/53, 61, 62, 63, 64/2004-आई आर (एम), एल-30012/52/2003-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th October, 2011

S.O. 3231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 103, 104, 105, 106, 107, 108/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd. (Marketing Division) Jaipur and their workman, which was received by the Central Government on 11-10-2011.

[No. L-30012/53, 61, 62, 63, 64/2004-IR(M)
and L-30012/52/2003-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JAIPUR
PRESENT**

**N.K. PUROHIT
PRESIDING OFFICER**

Case No. : 103/05

Reference No. L-30012/63/2004-IR(M)

Sh. Ganesh Sankhla

S/o Sh. Laddula, R/o Sector-8,
Plot No. 85/261, Pratap Nagar, Sanganer, Jaipur (Raj.)

V/s.

General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar, Jaipur.

Case No. : 104/05

Reference No. L-30012/62/2004-IR(M)

Sh. Richpal Singh

S/o Sh. Mangolal Jat

R/o Village Kanverpura

Via Gadhwadi Tehsil, Amer, Distt : Jaipur

V/s.

General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar, Jaipur.

Case No. : 105/05

Reference No. L-30012/61/2004-IR(M)

Sh. Vijay Singh Shekhawat

S/o Sh. Onkar Singh Shekhawat

R/o 419, Pratap Nagar, Extention,
Scheme, Jaipur.

V/s.

General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar, Jaipur.

Case No. : 106/05

Reference No. L-30012/52/2003-IR(M)

Sh. Girdhari Lal Jat

S/o Sh. Narayan Lal

R/o Village and Post Kaverpura Via Gadwadi, Jaipur.

V/s.

General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar, Jaipur

Case No. : 107/05

Reference No. L-30012/53/2004-IR(M)

Sh. Ashok Kumar Vyas

S/o Sh. Mohan Lal Vyas

R/o I-A-42, Subash Colony, Shastri Nagar, Jaipur.

V/s.

General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar, Jaipur

Case No. : 108/05

Reference No. L-30012/64/2004/IR(M)

Sh. Prithvi Singh Chauhan
S/o Sh. Jagdamba Singh Chauhan
Narsingh Dev Ki Bagchi
Fetehrqm Ka Tiba, Brahmपुर, Jaipur.

V/s.

General Manager,
IOCL (Marketing Division)
Rajasthan State Office
Ashok Chowk, Adarsh Nagar, Jaipur

PRESENT

For the claimants : Sh. Kunal Rawat
For the Non-Applicant : Sh. B.S. Ratnu

AWARD**23-8-2011**

1. These aforementioned references have been referred for adjudication to this tribunal by the Central Government in exercise of the powers conferred in clause D of sub-section 1 and 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which involve almost identical facts and question of law and are agitated against the same establishment i.e. Indian Oil Corporation Ltd. which are being disposed of vide this common Award.

2. The disputes referred to this tribunal relates to the validity of the action of the management of Indian Oil Corporation Ltd., Jaipur through General Manager in discontinuing the services of the claimant's w.e.f. respective dates mentioned in the references.

3. As per averments made by the claimants in their identical claim statements the IOCL recruited them as workmen and posted them at Coco Petrol Pump at Khalsa Khoti Circle, Jaipur. They worked there as workmen continuously for more than 240 days but their services were terminated without any notice or compensation in lieu of notice in violation of provision of Section 25-F of the Act. It has been alleged that after their termination the Corporation has recruited the fresh hands in violation of Section 25-H of the Act. It has further been alleged that they were employed as workman but to deprive them of the advantage of provisions of I.D. Act, they were designated as 'Trainee'. Thus, they have prayed that their termination order be declared as unjust and void respectively and they be reinstated in the services with back wages and other consequential benefits.

4. The Corporation in its reply to the statement of claim stated that since claimants were just trainees no relationship of employer and employee ever existed between the parties and the claimants were only trainees and were kept on training under a training scheme. It is also contended that being a Government of India undertaking the Corporation started the said scheme oriented training program, to impart training how to operate petrol pumps. The training period of the claimants was for a stipulated period and it was made clear to them that they shall not be absorbed on completion of the training program. It is further pleaded that the certificates of their training were issued in their favour to enable them to get the employment on petrol pumps and they had accepted the terms and condition of the training prior to the execution of the undertaking by them. The Corporation has further alleged that the claimants are not the workmen as defined u/s 2-S of the Act and on completion of training period by efflux of time their termination cannot be termed as retrenchment falling under Section 2(oo) of the Act as the cases of the claimants fall u/s 2(oo)(bb) of the Act.

5. In the rejoinder, the claimants have reiterated their earlier averments made by them in their respective claim statements.

6. In view of the averments made by both the sides the following points crop-up for consideration:—

- (i) Whether the claimants were employed by the corporation and they had worked for more than 240 days during preceding twelve months from the respective date of their alleged termination and whose services were terminated in violation of Section 25-F of the I.D. Act?
- (ii) Whether after termination of the claimants fresh hands were recruited by the Corporation in violation of Section 25-H of the Act?
- (iii) Whether the claimants fall in the category of workmen u/s 2-S of the I.D. Act?

7. In evidence, the claimants submitted their individual affidavits with almost similar contents. In rebuttal, the counter affidavits of management witnesses Sh. S.J. Dubey Chief Manager (H.R.), in case Nos. 103/05 to 108/05, Sh. R.D. Gupta, Deputy Manager (P and A) in case Nos. 103/05 to 107/05, Sh. S.K. Jain, Senior Manager LPG Sales, in case No. 104/05, Sh. K.L. Chaturvedi, Manager (Consumer Sales) in case Nos. 105/05, 106/05, 108/05 have been placed on record in respective cases.

8. The claimants have not adduced any documentary evidence. The Corporation has produced documents Ex. M-1 to M-6 in support of their case.

9. Heard both the parties and perused the relevant record. The point-wise discussion follow as under :—

Point No. 1 and 3

10. Since the facts involved in both the points are common, they are being discussed together.

11. The learned representative for the claimants contend that the claimants have worked for more than 240 days in a calendar year at the petrol pump at Khasa Khoti Circle, Jaipur under the supervision and control of the Corporation; that their names were not sponsored for training; that the Corporation was earning through their employment; that the Corporation earns money from the customers by sell of products; that there was no training institute for imparting training to them. The learned representative further contends that the claimants were working eight hours per day and their job was of perennial nature and the claimants fall in the category of the workmen as defined u/s 2-S of the Act. The learned representative also contends that despite the claimants had worked regularly for more than 240 days their services were terminated in violation of Section 25-F of the Act. The learned representative for the claimants furthermore contends that that there was neither syllabus for training nor any trainer or training institute. The contributions towards ESI, PF by the claimants show that they were not trainees. It has been alleged that the claimants were employed as workmen but to deprive them of their advantages of the benefits of their posts they were designated as trainees. Thus, the action of the Corporation is illegal, unjust and against public policy and also an unfair labour practice resorted by the Corporation. The learned representative on behalf of the claimants also contends that in the identical matter, award has been passed by this Tribunal in favour of the workmen therein.

12. Per contra, the learned representative on behalf of the Corporation submitted that the claimants were engaged under an employment scheme sponsored by the corporation for imparting training to assist the unemployed youth for better prospect for employment anywhere after completion of training. They were appointed as trainees who were paid monthly stipend and they were posted on retail outlets. The training was for a fixed term of 11 months and stipend of Rs. 1164 per month was payable. The corporation for the scheme sought the list of the names of the workmen from the employment exchange and who found suitable were given the training and their terms of employment expired with the efflux of time. The above mentioned said scheme was framed in terms of 25 points program of the Central Government. He further submitted that as per the terms and conditions mentioned in the letter of training and undertaking given by the claimants they were well aware that they were trainees for a fixed period and after completion of training they will be automatically discharged. The Corporation did not give any guarantee that the trainees would be absorbed as an employee. They were relived after completion of the training and their removal doesn't amount to retrenchment as per Section

2(o) (bb) of the Act. The learned representative further submitted that the claimants were never appointed as workmen and no employer-employee relation existed. The work was performed by them as trainee. Thus, they are not workman as defined u/s 2 (s) of the Act. Further, list of payment of bonus also does not support the contention of the claimants because bonus was not paid as employees. It was paid only on humanitarian grounds. It is mentioned in the list itself that bonus was to be paid to them as trainees. Thus, the documents on record do not substantiate the contention on behalf of the workmen. Furthermore submitted that question such as unfair labour practice or acting against public policy cannot be agitated being not part of the references.

13. I have given my thoughtful consideration on the rival submissions of both the sides and have scanned the relevant record.

14. The case of the claimants is that they were engaged as regular employee and were performing the job of perennial nature. The Corporation has resorted unfair labour practice by making pretext of training to deprive the workmen from the benefits available under the I.D. Act whereas the main thrust on behalf of the Corporation is that they were performing the said work as trainees on certain terms and conditions for a fix term and after expiry of the stipulated period their appointment came to an automatic end.

15. It has been contended on behalf of the Corporation that the tribunal cannot go beyond the point referred to in the reference. Therefore, any question such as unfair labour practice or acting against public policy cannot be agitated or adjudicated upon being not part of the reference or being beyond the terms of the reference on the basis of which the tribunal gets jurisdiction to adjudicate on the matter. In this regard learned representative on behalf of the management has relied on 2008(1)LLJ 465 (Gawahati).

16. In decision *supra* the terms of reference was whether the management was justified in denying the workman from carpenters work and withdrawing the daily extra payment which was allowed so long. The workman who was demoted refused to do any other work. The labour court ordered restoration of post and awarded back wages including extra pay. In above facts and circumstances, it was held that the tribunal erred by travelling beyond scope of the reference. The facts of the above decision are distinguishable.

17. As per Section 10(4) of the I.D. Act the tribunal can adjudicate on those points which appropriate government has specified in the reference matter and the matter incidental thereto. In present reference under adjudication the question under consideration is whether the alleged action of the management in termination of services of the workmen in respective cases is justified

and illegal ? While considering this question it can be seen whether the employer has acted bonafidely. Colorable exercise of the power under the contract or in case of unfair labour practice, a tribunal has jurisdiction to interfere. It can examine the substance of the matter and determine the real nature of the employment despite the veil of trainees covering the face of the contract and can see whether action of disengagement of the workmen under the garb of training scheme was justified and legal.

18. In JT 2004(8) SCC 272 referred by the learned representative on behalf of the workmen, Hon'ble Apex Court has observed as follows:—

“Whether a relation of an employer and a workman or an employee or an apprenticeship had been brought about is essentially question of fact. The court while determining such a dispute must consider factual matrix entrusted therein in the light of the provisions of the said Act. Once it is held that a contract or apprenticeship enter into by and between by the employer or a workman is genuine one and not a camouflage or a ruse, a presumption would be arise that the concerned person is not a workman.”

19. In view of the principles propounded in the aforementioned decision if it is found that a contract of apprenticeship/training is not genuine one and it is a camouflage or a ruse a presumption would arise that the person concerned is not a trainee. Thus, it can be seen whether the offer of appointment as trainee to the disputants is a sham contract or innocuous contract.

20. The letter containing the offer of appointment Ex-M addressed to the claimants respectively states that there training shall be for a period of 11 months; that during training stipend worth Rs. 1164 will be paid; that the training period there shall not be any employer and employee relationship between the parties; that on completion of the training the Indian Oil Corporation shall not absorb them however, on successful completion of the training period a certificate to that effect will be issued.

21. Ex-M-3 is an undertaking designed as the “Title of the Scheme” whereby the claimants have agreed to be governed by the scheme in terms of the letter for offer of appointment. Ex-M-4 is a letter written by the non-applicant corporation to the employment exchange for sending a list of candidates for training purely on temporary basis. Ex-M-5 is a letter from the employment exchange along with the list of eligible candidates for training and Ex-M-6 is a payment sheet of stipend.

22. The claimants Sh. Ganesh Sankhala, Sh. Richpal, Singh, Sh. Vijay Singh, Sh. Girdhari Lal, Sh. Ashok Vyas and Sh. Prithvi Singh have submitted their individual affidavits in support of their respective cases. Except the period during which work was performed by the claimants, the remaining contents of the affidavits of the claimants are similar. The

contents of the cross examination on the said affidavits are also similar. The claimants have admitted that they had received the letter containing offer of appointment mentioning the terms and condition of the scheme of training and after receiving the same they joined their duty on coco petrol pump. They have also admitted that the undertakings whereby the claimants have agreed to be governed by the scheme in terms of the letter of offer of appointment were signed by them respectively. They have also admitted their names are mentioned in the list forwarded by the employment exchange vide letter dated 4-9-2001 (Ex-M-5). But they have denied that the sheet pertaining to payments of stipends bear their signature.

23. The claimants have stated in their affidavits that they were not engaged as trainees and no training was ever imparted to them. In their cross examination they have stated that they were engaged for delivering of petrol in the customers vehicle and have denied that consolidated wages were paid to them in the capacity of trainees. They have stated that prior to their engagement they were knowing the job of delivering petrol into the vehicles. Thus, the claimants have categorically denied that they were appointed as trainees and have stated that they were performing the regular work.

24. Contrary to it, the management witness Sh. S.J. Dubey in his affidavit denied the claim of the workmen and has reiterated the averments in the reply to the claim statement. He has stated that the claimants had performed the work at coco petrol pump during period mentioned in respective reply to the claim statements. But he has stated that the work was performed by them as trainee not as workman. In cross examination he has admitted that the claimants used to deliver petrol into the vehicles of customers and collecting sales money from them. He has admitted that work for eight hours was used to be taken from the claimants. He has also admitted that ESI and PF were deducted. He has also admitted that the work which the claimants used to do still exists. He has stated that training was used to be imparted by different officers namely viz. Sh. Jiya Lal, Sh. Roop Singh, Sh. R.K. Gupta but he could not named the persons who imparted training in the year 2001 and 2002. The contents of the affidavits and cross examination in the respective cases are almost similar.

25. It is pertinent to mention that the affidavits of management witness Sh. R.D. Gupta have been produced in respective cases i.e. case No. 103/05 and 107/05, and affidavit of Sh. S. K. Jain and affidavits of Sh. K. L. Chaturvedi have been produced in case No. 104/05 and case No. 105/05, 106/05 and 108/05 respectively. The above witnesses have been produced to prove their signature on respective documents i.e. letters pertaining to offer of appointment and letter written to the employment officer for sending list of eligible candidates for recruitment of apprenticeship trainees. They have denied that signature of the claimants were obtained on blank papers on their respective undertakings. In cross

examination they have stated that had the claimants not agreed on the terms and conditions of the letter of offer, training would not have been imparted to them.

26. Learned representative for the corporation has submitted that from the documentary and oral evidence of the management brought on record, it is evident that in fact the claimants were engaged as trainees for employment oriented training and no employer employee relation existed and they were not covered u/s 2-(s) of the I.D. Act. Whereas the learned representative for the workmen urged that the workmen were not engaged as trainee and no training was imparted to them. Further even an apprentice is a workman under Section 2-(s) of the I.D. Act.

27. Under Section 2-(s) the workman has been defined and definition include a person employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward. It also includes an apprentice but it excludes person from the purview of the definition mentioned in sub-clause (I) to (IV).

28. In order to be a workman within Section 2-S of the Act a person must be working in one or the other capacities mentioned in the definition clause. In present matter it is evident from the record that the claimants said to be appointed as trainees were doing perennial work contemplated in the definition of the workman u/s 2-S of the I.D. Act and their case does not come within any exception mentioned in sub-clause I to IV of the said Section and as per definition of workman under said Section they are workmen. Thus, the contention of the learned representative for the management in this regard is not sustainable.

29. The next contention of the learned representative for the management was that the workmen were engaged as trainees for a fixed period of 11 months and as soon as the period of 11 months came to an end, they were discharged. As per the terms of agreement, undertaking and other documents on record, it is clear that under Section 2 (oo) (bb) of the I.D. Act if there is contract for a fixed period and the same came to an end after the expiry of the stipulated period then there is no retrenchment in the eye of law. In support of his contention reliance has been placed on 2006 ILLJ p-12(SC) and 2006 ILLJ 685(SC).

30. I have gone through above decisions referred to by the learned representative for the management. In decision 2006 ILLJ 12(SC) the facts thereof are that the workman was appointed by the employer on regular basis against the regular post and was being paid Rs. 1200 p.m. but his services were illegally terminated by the employer without any notice, notice pay and retrenchment compensation. The stand of the employer was that the workman was engaged on casual basis on daily wages for specific period and for specific work. He was never issued any appointment order in respect of any regular post. Hon'ble Apex Court held that both the Labour Court and the High Court fell in grave error by acting on factually and legally erroneous premises. The definite stand of the

appellant was that the workman was engaged on casual basis on daily wages for specific work and for specific period. Thus, termination of his service was not retrenchment as per Section 2(oo)(bb) of the I.D. Act. Details in this regard were indisputably filed. Therefore, Hon'ble Court held that provisions of Section 2(oo)(bb) of the Act are clearly applicable.

31. In 2006 ILLJ 685(SC) Appellant was appointed by the respondent as Junior Typist on N.M.R. basis for a specific period and was engaged again and again on daily wage basis for a specific period. When no extension was given, he raised a dispute which was referred to the Labour Court. The labour court held the termination illegal for non-compliance of the Section 25-F of I.D. Act. The High Court set aside the Labour Court's award. Hon'ble Apex court held that in all the orders of engagement of the workman specific periods have been mentioned, cesser of his service on expiring of said period was not retrenchment.

32. The aforesaid decisions turn on its own facts which are quite dissimilar from the present controversy and learned representative does not derive any assistance from both these decisions.

33. As per Section 2(oo) terminations by the employer of a workman for any reason whatsoever constitute retrenchment except cases specified in the exception provided in the Section itself. Clause (bb) of Section 2(oo) says that retrenchment does not include termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contemplated therein.

34. Clause (bb) of Section 2(oo) contemplates to cover a more general class of contracts where a regular contract of an employment is entered into and the termination of the service is because of non-renewal of the contract. A non-renewal of contract pre supposes an existing contract of employment which is not renewed. Engagement of a workman for specific period and specified work or seasonal work fall within the ambit of provision of Section 2(oo)(bb) but the said provisions are not applicable where such a contract in reality a camouflage and pretext of training is adopted so as to avoid rigor of the Act.

35. In AIR 2003 SC 3329 submitted by the learned representative for the workmen the core question before the Industrial Court as well as the High Court was whether the persons whose engagement was terminated were the employees within the meaning u/s 2-S of the I.D. Act. The Industrial Court upheld the plea of the management that they were trainees. In recording the conclusion that they were trainees the Industrial Court adverted to two factors. (1) Neither the complainant union nor the management had placed on record the appointment letters that would have been issued when the concerned persons were recruited in

1988. (2) On the complainant union's own showing the management, started issuing appointment letters appointing them as trainees only after 30-6-89 which itself would negative the case of the union that they were employed as labourers. The case of the management was that the disputants were trainees only and their traineeship was terminated by the management. The question came up for consideration before the Apex Court was whether the disputants were the employee within the meaning of Section 2-S of the I.D. Act. Hon'ble Apex Court held that the conclusions drawn by the labour court were perverse. The fact that no appointment letter were issued or filed does not possibly lead to the conclusion that the management version must be true. Similarly if the worker's union had taken the stand that anti-dated appointment letters were issued describing the employees as trainees after the dispute has arisen it is difficult to comprehend how that would demolish the case of the union that the concerned persons were really employed as workmen (helpers) and not as trainees. The Hon'ble Apex Court has further observed as under:—

"According to the Industrial Court, the fact that the 'trainees' were employed for performing the regular nature of work would not by itself make them workmen. The question then is, would it lead to an inference that they were trainees? The answer must be clearly in the negative. No evidence whatsoever was adduced on behalf of the management to show that for more than one and half years those persons remained as 'trainees' in the true sense of the term. It is pertinent to note the statement of the managements' witness that in June-July, 1989, the Company did not have any permanent workmen and all the persons employed were trainees. It would be impossible to believe that the entire production activity was being carried on with none other than the so-called trainees. If there were trainees, there should have been trainers too. The management evidently came forward with a false plea dubbing the employees/workmen as trainees so as to resort to summary termination and deny the legitimate benefits. On the facts and evidence brought on record, the conclusion was inescapable that the appellant-employer resorted to unfair labour practice. There would have been travesty of justice if the High Court declined to interfere with the findings arbitrarily and without reasonable basis reached by the Industrial Court."

36. In the said decision it was considered by the Hon'ble Court that if the disputants were trainee there, there should have been trainer too. The case of the management was also disbelieved on the ground that it did not have any permanent workmen. In view of the legal proposition laid down in the decision *supra* the status of trainee cannot be decided merely on basis of the person wearing the mask of an apprentice or trainee and on the

basis of apprenticeship contract or label which a person wears.

37. The facts of the referred decisions are squarely applicable to the present controversy and it fortifies the submission made on behalf of the workmen.

38. In the present matter from the evidence brought on record by the management it has failed to show that the corporation had any training institute or even a trainer to impart the training to the disputants in the field. It is evident from the record that the work performed by them was perennial in nature and it even exists after their disengagement. It further reveals that corporation had exercised the control and supervision over them. As per terms and conditions for the engagement the objective of training was to provide basic field training in work related to delivery of petrol/ diesel/lubricants in customer's vehicle, lubrication of customer's vehicle and customer's service. In view of the nature of job required to be performed by the claimants it is not believable that training for such a long period of 11 months was required. The terms and conditions envisage that both theoretical and practical training was to be imparted to them and tests were to be conducted from time to time and minimum marks to be obtained for passing the tests but there is no such pleadings that there was faculty for such theoretical and practical training and tests were conducted for assessment of the performance of the claimants. The management witness Sh. S.J. Dubey has also not stated in his affidavit that for imparting training there was any institute. Though in cross examination he has named certain persons said to be trainer but he could not name the persons who imparted the training in the year 2001 and 2002. His evidence on this point is very feeble and not reliable. The management witnesses Sh. R.D. Gupta, Sh. S.K. Jain and Sh. K.L. Chaturvedi have stated in respective cases that had claimants not agreed to the terms and conditions they would have not been allowed for training. Admittedly, undertakings bear signatures of the claimants but they were in a position in which they could obtain service or means of livelihood only upon terms and conditions imposed by the stronger party i.e. the Corporation or go without them.

39. Thus, delving deep into the matter, it reveals that the appointment order/contract Ex-M-1 was a veil and under the disguise of imparting the training to the claimants, their services were hired by the Corporation on payment of monthly consolidated wages for performing its regular work at the petrol pump which still exists today. It leads to conclusion that their appointment/contract is a sham one and it was only a device to escape the applicability of the provisions of I.D. Act. Thus, the case is not covered by clause (bb) of the Section 2(oo) of the Act. The plea set for on behalf of the corporation that the claimants were appointed as trainees and their appointment came to an automatic end on the expiry of the period of appointment, cannot be maintained.

40. Now, the crucial question which left for consideration is whether the claimants had worked for at least 240 days during preceding 12 months from the alleged date of termination.

41. To attract the provisions of Section 25-F of I.D. Act one of the condition required is that the workman is employed in any industry for a continuous period which would not be less than one year.

42. It is not the case of the above claimants that they were in continuous service of the non-applicant for one year within the meaning of Section (1) of Section 25(B) of the I.D. Act. Thus, it is to be seen whether the case of the claimants falls under sub section 2 of Section 25(B) which says that even if a workman has not been in continuous service for a period of one year as envisaged under sub section (1) of 25(B) of I.D. Act, he shall be deemed to have been in such continuous service for a period of one year if he has actually worked under the employer for 240 days in preceding period of twelve months from the date of his termination. The said sub section provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year. In 1981 Lab IC 806 Hon'ble Apex Court has elaborated the mode to invoke the said fiction as follows:—

“In order to invoke the fiction enacted in sub-s (2)(a), it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of a ‘retrenchment’. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman, pursuant to the deeming fiction enacted in sub-s 2(a), it will have to be assumed that the workman is in continuous service for a period of one year, and he will satisfy the eligibility qualification enacted in s 25F.”

43. In the background of the legal principles set out above factual scenario is to be examined.

44. In present matter, the following chart indicates the dates of appointment, the dates of termination, period during which the workmen have worked as per pleadings in the claim statement, reply to the claim statement,

reference and statement of the claimants in respective cases.

Case No.	Name of claimant	Date of termination on as per reference	As per claim State-ment	As per Reply to claim state-ment	As per affidavit of claimants
103/05	Ganesh Sankhala	21-5-01	26-6-00 to 21-5-01	22-6-00 to 20-5-01	26-6-00 to 21-5-01
104/05	Richpal Singh	12-7-03	13-8-02 to 12-7-03	13-8-02 to 12-7-03	13-8-02 to 12-7-03
105/05	Vijay Singh	12-5-02	13-6-01 to 12-5-02	13-6-01 to 12-5-02	13-6-01 to 12-5-02
106/05	Girdhari Lal	12-5-03	13-6-01 to 12-5-03	13-6-01 to 12-5-02	13-6-01 to 12-5-02
107/05	Ashok Kumar	1-7-01	2-8-00 to 1-7-01	1-8-00 to 30-6-01	2-8-00 to 30-6-01
108/05	Prithvi Singh	13-6-04	6-12-01 to 13-6-04	6-12-01 to 5-11-02	6-12-01 to 5-11-02

Case No. 103/05, 104/05, 105/05 and 107/05

45. As per averments in the claim statements the claimants Sh. Ganesh, Sh. Richpal, Sh. Vijay Singh, Sh. Ashok Kumar, had worked during period 26-6-00 to 21-5-01, 13-8-02 to 12-7-03, 13-6-01 to 12-5-02, 2-8-00 to 1-7-01 and their services were terminated on 21-5-01, 12-7-03, 12-5-02, 1-7-01 respectively. In reply to the claim statement it has been pleaded that the above named persons had worked as trainees during period 22-6-00 to 21-5-01, 13-8-02 to 12-7-03, 13-6-01 to 12-5-02, 1-8-00 to 30-6-01 respectively.

46. It is not in dispute that the above named claimants were performing the work relating to petrol pump i.e. measurement, delivering petrol into the vehicle of customers and dealing with customer etc. In reply to the claim and in evidence of management witness Sh. S.J. Dubey it has been admitted that the claimants Sh. Ganesh, Sh. Richpal, Sh. Vijay Singh, Sh. Ashok had performed the said work during period 22-6-00 to 21-5-01, 13-8-02 to 12-7-03, 13-6-01 to 12-5-02, 2-8-00 to 1-7-01 respectively.

47. Thus, it is established from the pleadings and evidence of the management witness itself that the concerned claimants i.e. Sh. Ganesh, Sh. Richpal, Sh. Vijay Singh, Sh. Ashok had worked for more than 240 days during preceding 12 months from the alleged date of termination i.e. 21-5-01, 12-7-03, 12-5-02, and 1-7-01 respectively.

48. On these facts the claimants Sh. Ganesh Sankhla, Sh. Richpal Singh, Sh. Vijay Singh, Sh. Ashok Kumar have

succeeded to establish that they have completed 240 days of actual service under the employment of the corporation in a calendar year preceding to their termination and their existed a nexus of employer employee relation between the parties. Indisputably, prior to their termination they were not served with one month's notice or the pay in lieu of the notice and no retrenchment compensation were paid to them. Therefore, their termination was in violation of Section 25-F of the I.D. Act.

Case No. 106/05 and 108/05

49. As per version of the claimants Sh. Girdhari and Sh. Prithvi Singh, their services were terminated on 12-5-03 and 13-6-04 respectively, it has been denied by the management, therefore, initial burden was on the claimants to establish that they had worked for at least 240 days during just preceding 12 months from the alleged date of their termination i.e. 12-5-03 and 13-6-04 respectively.

50. In case no. 106/05 and 108/05 claimants Sh. Girdhari and Sh. Prithvi Singh have pleaded in their claim statement that they had worked at Khasa Khoti Petrol pump during period 13-6-01 to 12-5-03 and 6-12-01 to 13-6-04 and their services were terminated on 12-5-03 and 13-6-04 respectively. Whereas as per averments in the respective reply to the claim statement the above named claimants have worked during period 13-6-01 to 12-5-02 and 6-12-01 to 5-11-02. The above claimants in their respective affidavits have admitted that they had worked during period 13-6-01 to 12-5-02 and 6-12-01 to 5-11-02. Thus, as per their own admission in their respective affidavits they had not worked for 240 days during preceding 12 months from alleged date of their termination i.e. 12-5-03 and 13-6-04 respectively. Their statements in cross-examination that they had worked up to 12-5-03 and 13-6-04 respectively are contrary to their own admission in their respective affidavits. Therefore, it is not established that workmen had worked during just preceding 12 months from the said alleged date of termination respectively.

51. Since, the claimants Sh. Girdhari Lal and Sh. Prithvi Singh have failed to establish that they had worked for 240 days during preceding 12 months from the alleged date of their termination therefore, provisions of Section 25-F of the I.D. Act are not attracted in their matter.

52. Accordingly, the point No. 1 is decided in favour of all the claimants Sh. Ganesh Sankhla, Sh. Richpal Singh, Sh. Vijay Singh, Sh. Ashok Kumar but the same is decided against the claimants Sh. Girdhari Lal and Sh. Prithvi Singh. As regard point No. 3 is concerned, it is decided in favour of all the claimants.

Point No. 2

53. The workmen in their pleadings have stated that after their termination the fresh hands were recruited by the Corporation. They have repeated the same in their statement on affidavit.

54. The management witness Sh. S. J. Dubey has denied that subsequent to the alleged termination of the

workmen fresh hands have been recruited by the Corporation. He has stated that no seniority list was prepared because there was no necessity to do so.

55. In claim statements it is alleged that subsequent to the termination of the claimants fresh hands were engaged by the non-applicant corporation in violation of Section 25-H but the claimants have not named any such person in their pleadings. Even in their affidavits the names of the persons said to be engaged have not been disclosed. Mere bald allegations in their oral evidence on this point without any corroborative evidence do not inspire confidence and cannot be relied upon. The claimants have failed to establish that subsequent to their termination fresh hands were employed by the corporation in violation of Section of 25-G of the I.D. Act. Therefore, this point is decided against the claimants.

56. On account of the decision on point No. 1 & 3 in favour of the claimants Sh. Ganesh Sankhla, Sh. Richpal Singh, Sh. Vijay Singh, Sh. Ashok Kumar their respective claim deserves to be allowed and it is held that the action of the management in terminating the services of the above claimants was not legal and justified being in violation of the provisions of Section 25-F of the I.D. Act. Since claimants Sh. Girdhari Lal and Sh. Prithvi Singh have failed to establish that their services were terminated in violation of Section 25-F of the I.D. Act, their claims deserves to be rejected.

Relief

57. The learned representative of the claimants has contended that claimants should be reinstated in service with full back wages. In this regard he has also referred earlier award passed in the year 2005 by this tribunal in almost identical matter. Whereas on behalf of the corporation it has been contended that no posts exist in the corporation, therefore, the reinstatement of the claimants could not meet the ends of justice in absence of any post.

58. Earlier in cases of termination in violation of Section 25-F reinstatement of the workman with full back wages used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of the Hon'ble Supreme Court. In a large number of decisions in the matter of grant of relief of the kind, Hon'ble Apex Court has distinguished between a daily wager who does not hold a post and a permanent employee.

59. In recent decision (2010) 1 SCC (L & S) 545 Jagbir Singh V/s. Haryana State Agriculture Mktg. Board after considering the earlier decisions referred to therein on the point should an order of reinstatement automatically follows in a case of violation of Section 25-F of the I.D. Act Hon'ble Apex Court has observed that:—

"It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that

an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This court has distinguished between a daily wager who does not hold a post and a permanent employee."

60. Continuing this line of approach in decision (2010) 2 SCC (L & S) 376 Hon'ble Apex Court held that:—

"While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme Court probably having regard to the changes in the Policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour court can award compensation."

"There has been a shift in the legal position laid down by the Supreme Court and now there is no hard-and-fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

61. In present matter, the claimants Sh.Ganesh Sankhla, Sh.Richpal Singh, Sh.Vijay Singh, Sh.Ashok Kumar had worked with the corporation for a period of less than one year and were drawing consolidated wages round about Rs.1600 p.m. While giving relief this fact cannot be ignored that the claimants were not holding any regular post. Keeping in view the nature of job and nature of employment, the lapse of time after termination of the services, the total length of service rendered by the claimants and having regard to entire facts and circumstances in the cases instead of reinstating them the interest of justice will be sub-served by paying compensation to the workmen instead and in lieu of reinstatement in service.

62. Accordingly, references in case nos. 103/05, 104/05, 105/05 and 107/05 are answered in affirmative in favour of the claimants and against the Indian Oil Corporation Ltd. It is held that the action of the management in termination of the services of the claimants Sh.Ganesh, Sh.Richpal, Sh.Vijay Singh, Sh.Ashok Kumar, is illegal and unjustified respectively. Therefore, the non-applicant Corporation is directed to pay compensation to aforementioned each claimant worth Rs.40,000 (Rupees Forty Thousands) instead and in lieu of their reinstatement in service. The payments shall be made within eight weeks from the date of publication of award failing which it shall carry interest @ 9%.

63. Since, In references In respect of claimants Sh.Girdhari and Sh. Prithvi Singh (in case no. 106/05 and 108/05 respectively), it is not established that alleged action of the management in termination of their services was in violation in Section 25-F and 25-G of the I.D.Act, the same are answered in negative against the said claimants. Resultantly, they are not entitled to get any relief.

64. A common Award is passed in these terms accordingly.

65. Award as above.

66. Let a copy of the award be sent to the Central Government for publication u/s 17(1) of the Act. A Copy of the award be also annexed with each connected file.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2011

क्र.आ. 3232.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 28/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2011 को प्राप्त हुआ था

[सं. एल 41012/15/2009-आई.आर.(बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 12th October, 2011

S.O. 3232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Southern Railway and their workmen, which was received by the Central Government on 12-10-2011

[No. L-41012/15/2009-IR (B-I)]
RAMESH SINGH, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Friday, the 30th September, 2011

Present : Shri A.N. JANARDANAN, Presiding Officer

Industrial Dispute No. 28/2010

(In the matter of the dispute for adjudication under clause (d) of sub-Section (1) and sub-Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Southern Railway and their workman)

BETWEEN

Sri K. Kuppan

1st Party/Petitioner

Vs.

The Divisional Railway Manager/
 Personnel/MAS, Divisional Office
 Park Town, Chennai-600003

2nd Party/Respondent

Appearance :

For the 1st party/Petitioner : Sri G. Muthu, Advocate

For the 2nd Party/Management : Sri G. Kalyan, Advocate

AWARD

The Central Government, Ministry of Labour vide its Order No.L-41012/15/2009-IR(B-I) dated 04-06-2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

“Whether the action of the Manager of Southern Railway in not allowing Sri K. Kuppan to join his duties and/or in terminating his services w. e. f 24-07-1988 is legal and justified? If not, what relief the workman is entitled to and from which date?”

2. After the receipt of the Industrial Dispute, the referred ID was taken on file as ID 28/2010. Pursuant to notice both the parties entered appearance through their respective counsel and filed their Claim and Counter Statement as the case may be.

3. The Claim Statement contentions briefly read as follows:

Petitioner, a Khalasi under Southern Railway from 24-09-1981 was arrested on a false complaint by RPF on 30-04-1986 and kept in Police and Judicial custody. Criminal Case as CC No. 12042 of 1990 was foisted against him before 6th Metropolitan Magistrate at Chennai. He was acquitted in that case on 03-04-2000. His claim for reinstatement was refused. Railway Minister also turned down his request. Respondent on 3-8-2005 reported to the Additional Personal Secretary to Minister of State for Railways that he was unauthorizedly absent and he was

deemed to have resigned from duty which is wrong. He was prevented from attending duty by Police he being under Police custody. There was no notice issued to him or any domestic enquiry held. Charges of unauthorized absence are only concoctions. He has not resigned from the service. The refusal to employ him amounts to illegal termination of service which is not just and is against the principles of natural justice. Management has not appealed against the judgment of the acquittal of the petitioner. By the Court Order the charges are proved foisted. Hence the claim for reinstatement with all benefits.

3. Counter Statement contentions briefly read as follows:

While a Casual Labour petitioner was arrested on 30-04-1986 for unlawful possession of Railway property by RPF Inspector at Basin Bridge. Crime No. 4/86 was registered against him. There was also CC No. 12042/1990 filed against him in Court. From 30-04-1986 petitioner never reported for duty or informed the authority. He had been continuously absent from 24-04-1988 to 24-07-1988. He along with 11 other Casual Labourers with similar conduct was treated as deemed to have resigned as per office letter dated 27-12-1988 with effect from 24-07-1988. Due to his non-attendance in Court on 25-02-1988 for trial he was arrested on 16-08-1988 and remanded to judicial custody. After 15-07-1998 he was released on conditional bail by Court. He has been absconding from duty and dodging the RPF from arrest during 24-04-1988 to 24-07-1988. The petitioner/accused was being discharged from the case under Section-245(2) of CrPC for the absence of witnesses. That he was taken to Police custody on 24-04-1986. Petitioner's claim is belated. Petitioner was on bail in the year 1986, 1990 and he could have approached for reinstatement. Even after acquittal by Court he has not approached for the purpose. ID was raised only in 2007. Petitioner had not been regularized in Railway. He himself abandoned the service. He cannot claim regularization. He is not entitled to retrenchment compensation. Petitioner aged 52 years waited nearly for 25 years to raise the claim. Charges in the Criminal Case against him are serious though he was acquitted. Government has dispensed with the system of engaging Casual Labour. Claim is to be dismissed.

4. Points for consideration are:

(i) Whether the action of Southern Railway in not allowing petitioner to join duty or in terminating his service is legal and justified?

(ii) To what relief the petitioner is entitled?

5. The evidence consists of oral evidence of WW1 and Ex. W1 to Ex. W10 on the petitioner's side and the oral evidence of MW 1 and Ex. M1 to Ex. M 3 on the Respondent's side.

Points (i) and (ii)

6. Heard both sides and perused the records, documents and the written arguments filed on behalf of the petitioner. The learned counsel for the petitioner and the Respondent keenly argued in support of their respective contentions. Reliance was placed on behalf of the petitioner on the decision of the High Court of Kerala in *D. VENU AND OTHERS VS. SENEN FERNANDES AND OTHERS* (1995-II-LLJ-1113) where it is held that “administrative or quasi-judicial tribunal are only fact-finding bodies and the method of fact-finding varies from that sanctioned by law in courts”. In *HARJINDER SINGH VS. PUNJAB STATE WAREHOUSING CORPORATION* (2002-II-LLJ-277) the Apex Court held that social justice is the very signature tune of our Constitution and being deeply embedded in our constitutional ethos in a way is the arch of the Constitution which ensures rights of the common man to be interpreted in a meaningful way so that life can be lived with human dignity. It is the judges duty to uphold the constitutional focus on social justice without being in any way misled by the glitz and glare of globalization. In *JAI BHAGWAN VS. AMBALA CENTRAL COOPERATIVE BANK AND ANOTHER* (1984-I-LLJ-52) Supreme Court held as follows: “the appellant was never asked to answer any charges, there was no enquiry against him, no notice was issued to him to show cause why his services should not be terminated and even the order terminating his services failed to mention any reason. The order terminating the services of the appellant was wholly unsustainable. If, therefore, the bank wanted to sustain the order terminating the services of the appellant, it was up to the bank to lead necessary evidence to prove such charges as it desired to establish against the appellant. “In *MUKU SINGH AND OTHERS VS. EASTERN COALFIELDS LTD. AND OTHERS* (1994-II-LLN-328) High Court of Calcutta held “the contention that if domestic enquiry was held, the workmen would have challenged the same on the ground that there cannot be two parallel proceedings is not reason for dispensing with the enquiry. Based on allegation pending before Civil Court the respondent cannot claim to be judges of their own case and to take a decision to dismiss the workmen without any enquiry and without any opportunity of hearing to the workmen. No material has been placed to show that satisfaction of the respondent was genuine and bonafide. If matter is pending before competent court for effective adjudication the workmen could have been suspended if the rules permit, but the steps taken to dismiss them are wholly unwarranted and uncalled for”. In *JAYWANT BHASKAR SAWANT VS. BOARD OF TRUSTEES OF PORT OF BOMBAY AND OTHERS* (1994-II-LLN-1210) High Court of Bombay held “it is undoubtedly well-settled law that there is no legal bar to the continuation of disciplinary proceeding in an appropriate case merely because of the chargesheeted employee having been acquitted at the criminal trial. At times the accused is given benefit of doubt. Some times the accused may be acquitted

on a technical ground like lack of sanction. If, however, the accused is honourably acquitted by the criminal court, the departmental authorities are under an obligation to attach considerable weightage to the verdict of the criminal court. Normally it would not be expedient to continue the departmental inquiry on the same facts, once the chargesheeted employee is honourably acquitted at the criminal trial. It is, however, possible in the realm of theory that the departmental authorities may be justified in continuing the inquiry for a cause notwithstanding the honourable acquittal of the accused. It is, however, totally erroneous to observe as observed by the enquiry officer in his report that the findings recorded at the criminal trial are totally irrelevant in the departmental inquiry. The enquiry officer, disciplinary authority and the appellate authority did not at all apply their mind to the verdict of honourable acquittal and complete exoneration of the petitioner from the charge of the criminal Court for total want of evidence and have totally ignored the findings and the judgment of the criminal Court altogether under a misconception that such honourable acquittal is totally irrelevant. Such an order of acquittal is not totally irrelevant in a civil proceedings or the departmental enquiry. No public authority is allowed to misuse its power. Public authorities must exercise their statutory discretion fairly and reasonably”. In *BHIMRAO RAMBHAU ABAHAND VS. KOHINOOR ENGINEERING CO.* (2005-III-LLJ-606) High Court of Bombay held “even if abandonment of service was examined, it was necessary for the Labour Court to consider the issue of compliance of principles of natural justice”. In *DISTRICT MANAGER TASMAR, COIMBATORE REGION, ERODE VS. S. VELLIYANGIRI* (2009-IV-LLJ-487) High Court of Madras held that “charges against the Respondent were serious. There were major misconducts. In such a case punishment of dismissal could be inflicted only on issuing Charge Memo and proper enquiry. Dismissal not sustainable as no enquiry was held”. In *BSES RAJDHANI YAMUNA POWER LTD. VS. UNION OF INDIA AND OTHERS* (2011-I-LLJ-748) High Court of Delhi held “offences under Sections-323, 148 and 149 of IPC were held not to involve moral turpitude so as to justify termination from service”.

7. On behalf the Respondent reliance was placed on the decision of the Rajasthan High Court in *ANAND JAIN (DR.) VS. STATE OF RAJASTHAN AND ANOTHER* held on 15.07.2003 that:

In *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association and Anr.*, AIR 2000 SC 2198, and *Aligarh Muslim University and Ors. v. Mansoor Ali Khan*, AIR 2000 SC 2783, the Hon'ble Supreme Court rules that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceased to be in serve. In such a case, there is no need to hold an enquiry or to give any notice as it

would amount to useless formalities.

This Court in the case of Dr. S.M. Mansoor v. State of Rajasthan, 2002 (2) CDR 1661 (Raj.), relying on the decision of Hon'ble Supreme Court in the cases of Syndicate Bank (Supra) and Aligarh Muslim University has taken similar view and found the case of the petitioner in that case to be that of voluntarily abandonment of service and thus, his termination was found to be proper. This Court in the above has further held that in the case of abandonment of service, the State can remove name of concerned person from the register of its employee treating it a voluntary abandonment of service without holding a regular enquiry.

8. Decision dated 20-10-1995 in A. Laksmanan Vs. Union of India Represented by Divisional Railway Manager, Madras Division and Two Others of Central Administrative Tribunal is also quoted by the learned counsel for the Respondent.

9. Bestowing my due consideration to the rival contentions and to the decisions relied on by either side I am led to conclude that it is the petitioner who has made out a good case to succeed. The cessation of the petitioner's service is not an outright termination from service or a voluntary resignation or abandonment of the same by the petitioner. There was no notice issued to him or an enquiry held. Though the absence of the petitioner was there for a continued and longer period the same is not deliberate on the part of the employee. Admittedly he was being arraigned in cases before Criminal Court as well as before the RPF. Though the Court acquitted him, true, that is not indicative of clear exoneration of the petitioner. The case is not shown to be one involving moral turpitude. Admittedly, he was arrested on 13-4-1986. It is from that date that the petitioner never reported for duty. The fact that he never informed his whereabouts thereafter to the authority is to be appreciated at a context in which he is able to account for it. By not holding no enquiry after issuing a notice such an opportunity has been deprived to him. That he had been absconding from duty cannot be taken for granted as contended by the Respondent. That the claim of the petitioner is belated also cannot be taken as a ground against him. In the circumstances on which the petitioner had been arrested by Police on various occasions and had been in Police custody and Judicial custody whether the belated raising of ID has been justified or excusable or condonable is a matter which should have been looked into by the authorities while he was refused to join duty for which opportunity is available to the petitioner only in the forum provided by the domestic enquiry after issuance of a due notice. Though petitioner is a casual labour, though with a temporary status he is entitled to some remedy of compensation if not to reinstatement as appropriate relief even when the dispute is raised after 10 years as held by the Bombay High Court in Mohammad, S/o Sheikh

Rahamatullah Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Amaravathi and Two others (2011-LLR-1023). As held by the High Court of Punjab and Haryana in Punjab Agricultural University and Another Vs. Presiding Officer, Labour Court and Another (2011-LLR-1086) "even a reinstatement to the daily wage is proper in the absence of enquiry or compensation".

10. As pleaded by the Respondent/Management now the Government of India, Ministry of Railways has dispensed with the system of engaging casual labour. In that case even if the petitioner is to be given some relief it cannot be by way of reinstatement. The above contention has not been substantiated by the Respondent leaving it a mere pleadings which without proof is not evidence. Contention on behalf of the Respondent that many of the representation of the petitioner have been suitably replied cannot be found to hold good for the reason of denial of principles of natural justice which has really prejudiced the petitioner. That not holding an enquiry has never been weighed consideration with the higher authorities in rejecting the claim of the petitioner for any reinstatement. The petitioner is therefore entitled to reinstatement if the Management can do so. If it is claimed that the Government has dispensed with the system of engaging casual labourers is not true. If the same is true the petitioner is to be adequately compensated with reasonable compensation. The options are left open to the Management. If he is reinstated he will not be entitled to back wages or attendant benefits but would be entitled to continuity of service and all other attendant benefits thereafter from the date of his rejoining duty on reinstatement. If he is not being reinstated by the Management but is opting to give compensation the same is liquidated to the quantum of Rs. 8.50 lakhs with interest @ 12% from the day immediately after 30 days from the date of the publication of the award in Gazette of India. The petitioner is entitled to the relief as above.

11. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 30th September, 2011)

A. N. JANARDANAN, Presiding Officer

Witness Examined

For the 1st Party/Petitioner : WW1, Sri K. Kuppan
For the 2nd Party/Management : MW1 Sri K. Kamaraj

Documents Marked On the petitioner's side

Ex. No.	Date	Description
EX.W1	27.12.1988	Divisional Railway Manager's Office Notice
EX.W2	05.07.1999	Divisional Personnel Officer/MAS letter to Kuppan

Ex.W3	03-04-2000	VI Metro-Magistrate Court-Judgment
Ex.W4	22-11-2002	Divisional Manager's Office Notice
Ex.W5	01-06-2005	Kuppan letter to Hon'ble Railway Minister
Ex.W6	03-08-2005	N. Jayaram Divisional Manager letter-P.S. to Minister
Ex.W7	09-1-2005	Kuppan letter to Hon'ble Minister
Ex.W8	03-03-2009	ACL Failure Report
Ex.W9	04-06-2010	Ministry of Labour-Order
Ex.W10	14-06-2010	Industrial Tribunal-cum-Labour Court Notice

On the Management's side

Ex.No	Date	Description
Ex.M1	12-4-2007	Service Register
Ex.M2	-	Letter from the Divisional Security Commissioner
Ex.M3	-	Para 2001-2002 and 2006 of Indian Railway Establishment Manual

नई दिल्ली, 12 अक्टूबर, 2011

का.आ. 3233.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत मैसर्स भारतीय जीवन बीमा निगम अजमेर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 9/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2011 को प्राप्त हुआ था।

[सं. एल-17011/3/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th October, 2011

S.O. 3233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2008) of the Central Government Industrial Tribunal/Labour Court, Ajmer now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India Ajmer and their workmen, which was received by the Central Government on 12-10-2011.

[No. L-17011/3/2008-IR (M)]

JOHAN TOPNO, Under Secy.

अनुबन्ध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर
पीठासीन अधिकारी—श्री मनोज कुमार व्यास, आर एस जे एस

प्रकरण संख्या—सी.आई.टी.आर. 09/08

रेफरेंस संख्या एल-17011/3/2008-आई आर (एम)

दिनांक 29-9-2008

श्री रमेश चंद बुंदेल पुत्र श्री घीसूलाल जरिये सेक्रेटरी ऑल इंडिया एस.सी./एस.टी.एंड बुद्धिस्ट, एल आई सी एम्पलाईज वेलफेयर

एसेसिएशन केयर ऑफ एल आई सी ऑफ इंडिया, डिवीजन ऑफिस
रानाडे मार्ग, अजमेर

—प्रार्थी

बनाम

दी सीनियर डिवीजनल मैनेजर, एल आई सी ऑफ इंडिया,
डिवीजनल ऑफिस, जीवन प्रकाश, रानाडे मार्ग, अजमेर

—अप्रार्थी

उपस्थिति

प्रार्थी की ओर से : श्री डी. डी. शर्मा अधिवक्ता

अप्रार्थी की ओर से : श्री कृष्णावतार, अधिवक्ता

अवाई

दिनांक 11-8-2011

1. केन्द्र सरकार, श्रम विभाग, की ओर से इस न्यायालय के अधिनिर्णयार्थ निम्न विवाद प्रेषित किया है:-

“Whether the action of the management of Sr. Divisional Manager, LIC of India, Zonal Office, Ranade Marg, Ajmer vide order dated 10-2-2000 in deducting one increment of Sh. Ramesh Chand Bundale is justified and legal. To what relief the workman is entitled?”

2. उभय पक्षों को नोटिस जारी किये गये। प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम में कहा गया है कि अप्रार्थी ने प्रार्थी के विरुद्ध एक आरोप पत्र दिनांक 6-10-97 प्रदत्त कर आरोप लगाया है कि श्रमिक ने उक्त आरोप पत्र दिनांक 16-1-97 की जांच के दौरान अप्रार्थी को प्रस्तुत पत्र दिनांक 20-8-97 में व्यक्तिगत कर्मचारी की हैसियत से असामान्य आचरण का परिचय दिया जो अनुशासनहीनता की परिधि में आता है तथा अधिकारियों द्वारा प्रदत्त पत्र 11-9-97 तथा 13-9-97 लेने से इंकार किया और अपने अधिकारियों के आदेशों की अवहेलना की तथा बताया गया कार्य नहीं किया। उक्त आरोप पत्र की जांच कार्यवाही के संबंध में नियुक्त जांच अधिकारी सुश्री आराधना दुग्गल की नियुक्ति के संबंध में श्रमिक को कोई सूचना नहीं दी गयी और जांच अधिकारी से पूछे जाने पर कोई संतोषजनक उत्तर अथवा पत्र श्रमिक को नहीं दिया गया। जांच में श्रमिक को बचाव का कोई व्यक्तिगत अवसर प्रदान नहीं किया गया तथा प्रार्थी की एक वेतन वृद्धि स्थाई रूप से कम करने की शास्ति दी गयी। उक्त दंडादेश दिनांक 10-2-2000 के विरुद्ध विभागीय अपील दिनांक 27-5-2000 प्रस्तुत की जिस पर भी अपील अधिकारी ने श्रमिक को व्यक्तिगत रूप से सुने बिना अभिलेख के विपरीत जाकर आदेश दिनांक 25-7-2000 पारित करते हुए श्रमिक की अपील गिरस्त की और दंडादेश को बहाल रखा। अप्रार्थी द्वारा प्रिज्युडिस और बायस्ड होकर प्राकृतिक न्याय के विपरीत जाकर मन-माने तरीके से अभिलेख पर मौजूद तथ्य एवं साक्ष्य के विपरीत जाकर आदेश पारित किया है। कार्यवाही एकतरफा की गयी है। श्रमिक के पत्र दिनांक 20-8-97 के कौन से भाग की भाषा अथवा शब्द अनुशासनहीनता की श्रेणी में आता है यह अंकित नहीं किया गया है और न ही आरोप पत्र में अंकित है। अमियोजन गदाहों से जिरह व बचाव का व्यक्तिगत अवसर प्रदान नहीं किया गया है। जांच कार्यवाही विधि-विरुद्ध व

प्रिन्सिपल होकर जल्दबाजी में पूरी की गयी है। अतः उपरोक्त दंडादेश दि. 10-2-2000 को निरस्त करने एवं काटी गयी राशि मय ब्याज लौटाने का आदेश पारित करने का निवेदन किया गया है।

3. जवाब में अप्रार्थी की ओर से यह कहा गया है कि यह विवाद औद्योगिक विवाद की परिभाषा में नहीं आता है। प्रार्थी श्रमिक की परिभाषा में नहीं है। उक्त जांच रिपोर्ट में कर्मचारी को सुनवाई का अवसर देकर उचित दंडादेश दिया गया है। यह गलत है कि अपील निर्णय से पूर्व कर्मचारी को नहीं सुना गया हो एवं अभिलेख के विपरीत जाकर अपील निस्तारित की गयी है यह भी गलत है कि दंडादेश अवैधानिक और प्राकृतिक न्याय के सिद्धांतों के विपरीत है। प्रार्थी को जांच में बचाव व सुनवाई का पूर्ण अवसर दिया गया। विभागीय अपील भी नियमानुसार निर्णीत की गयी। नैसर्गिक न्याय के सिद्धांतों की पूर्णतः पालना की गयी। अतः क्लेम निरस्त करने का निवेदन किया है।

4. लिखित बहस भी प्रस्तुत हुई है। बहस सुनी गयी, पत्रावली पर उपलब्ध दस्तावेजों का अवलोकन किया गया। उक्त दस्तावेजों में प्रार्थी को जारी आरोप पत्र दिनांक 6-10-97 की प्रति प्रस्तुत की गयी है। प्रार्थी द्वारा वरिष्ठ मंडल प्रबंधक को लिखे गये पत्र दिनांक 20-8-97 एवं 23-10-97 की प्रति भी संलग्न है। प्रकरण में श्री के.पी.गर्ग को जांच अधिकारी नियुक्त किया गया। दिनांक 13-12-97 के पत्र के अनुसार श्री के.पी.गर्ग के स्थान पर श्रीमति आराधना दुग्गल को दिनांक 10-12-97 के आदेश से जांच अधिकारी नियुक्त करने का लिख गया है, जिसकी प्रति इस पत्र के जरिये प्रार्थी को प्रेषित की गयी है। दिनांक 9-1-98 को जांच अधिकारी द्वारा कार्यवाही प्रारंभ की गयी। प्रार्थी की अनुपस्थिति के कारण दिनांक 17-1-98 को नियत की गयी। द्वितीय बैठक 17-1-98 को हुई जिसमें भी प्रार्थी अनुपस्थित था। आगामी बैठक 24-1-98 को नियत की गयी। दिनांक 24-1-98 को पुनः प्रार्थी की अनुपस्थिति के कारण अगली बैठक 9-2-98 को तय की गयी जिसकी सूचना प्रार्थी को प्रेषित करने का पत्र पत्रावली में संलग्न है। दिनांक 9-2-98 को हुई कार्यवाही का विवरण भी संलग्न है जिसमें प्रार्थी द्वारा उपस्थिति दी गयी। प्रार्थी ने उस कार्यवाही में जांच अधिकारी को यह प्रश्न किया है कि आपको जांच अधिकारी किन नियमों के अंतर्गत नियुक्त किया गया है। जांच अधिकारी द्वारा यह कहा गया है कि यह प्रश्न जांच कार्यवाही में निराधार है तथा आरोप पत्र के क्षेत्र के बाहर है। अतः आरोपों के बारे में प्रार्थी से पूछा गया तो प्रार्थी ने कहा कि मैं इस प्रश्न का उत्तर नहीं दूंगा जब तक आप मुझे जांच कार्यवाही में आपके जांच अधिकारी की नियुक्ति संबंधी प्रावधान नहीं बनायेंगे। मैं आपको जांच अधिकारी नहीं मान रहा हूँ। अगली बैठक 13-2-98 को निश्चित की गयी। 13-2-98 की कार्यवाही का विवरण भी प्रस्तुत किया गया है। साक्ष्य के लिए आगामी बैठक 25-2-98 नियत की गयी। दिनांक 13-2-98 की कार्यवाही में प्रार्थी की उपस्थिति थी। दिनांक 25-2-98 को जांच कार्यवाही में प्रार्थी द्वारा उपस्थिति नहीं दी गयी तथा इस कार्यवाही में प्रस्तुति अधिकारी द्वारा साक्षीगण के कथन लिखे। जांच रिपोर्ट दिनांक 6-3-98 की प्रति संलग्न है। इस जांच रिपोर्ट पर प्रार्थी को कारण बताओं नोटिस जारी किया गया कि क्यों

नहीं उन पर प्रस्तावित नौकरी से बर्खास्त करने की शास्ति लगायी जावे। उक्त कारण बताओ नोटिस का प्रत्युत्तर प्रार्थी द्वारा दिनांक 6-5-98 को प्रस्तुत किया गया तथा अनुशासन अधिकारी द्वारा 10-2-2000 को पारित आदेश में प्रार्थी के प्रति मानवीय दृष्टिकोण अपनाते हुए नौकरी से बर्खास्त करने की प्रस्तावित शास्ति में संशोधन व शिथिलता करते हुए एक वेतन वृद्धि कम करने की शास्ति स्थायी रूप से लगाने का आदेश दिया गया। अपील का आदेश दिनांक 25-7-2000 को पारित किया गया जिसके द्वारा अपील अस्वीकार की गयी। उक्त आदेश की प्रति भी पत्रावली में संलग्न है।

5. बहस में प्रार्थी की ओर से यह कहा गया है कि उसके विरुद्ध जो दंडादेश पारित हुआ है, उसके पूर्व विभागीय जांच में प्रार्थी को सुनवाई और बचाव का अवसर नहीं दिया गया। एक पक्षीय कार्यवाही उसके विरुद्ध विद्वेष की भावना से पूर्ण की गयी है तथा उसके विरुद्ध यह दंडादेश बायस्ट होकर पारित किया गया है। आरोप पत्र ही स्पष्ट नहीं है कि तथाकथित पत्र दिनांक 20-8-97 का कौनसा भाग अपशब्द, अनुशासनहीनता की श्रेणी में आता है। साक्ष्य से आरोप साबित नहीं होते हैं। मन-माने तरीके से दंडादेश प्राकृतिक न्याय के सिद्धांतों के विपरीत पारित किया गया है।

6. अप्रार्थी की ओर से बहस में यह कहा गया है कि जो भी विभागीय कार्यवाही हुई है वह पूर्णतः विधि-सम्मत प्रक्रिया अपनाकर की गयी है प्रार्थी को विभागीय जांच कार्यवाही में बचाव एवं सुनवाई का पूर्ण अवसर दिया गया है परंतु प्रार्थी द्वारा जान बूझकर जांच कार्यवाही में भाग नहीं लिया गया। इस कारण से प्रार्थी के विरुद्ध एकपक्षीय कार्यवाही की गयी। अतः अब प्रार्थी यह नहीं कह सकता कि उसे बचाव व सुनवाई का पर्याप्त अवसर नहीं दिया गया। पत्रावली पर जो दस्तावेज प्रस्तुत किये गये हैं, उनसे भी यह स्पष्ट होता है कि प्रार्थी को बचाव का पूर्ण अवसर दिया गया। जांच अधिकारी के विरुद्ध प्रार्थी का यह कथन कि प्रिन्सिपल होकर जांच की गयी है, इस तथ्य को साबित करने के लिए कोई दस्तावेजी साक्ष्य पत्रावली पर नहीं है। मात्र जांच अधिकारी के विरुद्ध आरोप लगाना पर्याप्त नहीं है बल्कि प्रिन्सिपल अथवा विद्वेष को पर्याप्त साक्ष्य से साबित भी किया जाना चाहिए। अतः निवेदन किया है कि प्रार्थी का क्लेम खारिज किया जावे।

7. प्रार्थी को आरोप पत्र दिनांक 6-10-97 जारी किया गया इसकी प्रति प्रस्तुत की गयी है, जिस पत्र दिनांक 20-8-97 का हवाला आरोप पत्र में किया गया है उस पत्र की प्रति भी पत्रावली में प्रस्तुत की गयी है। जांच कार्यवाही के दौरान हुई बैठकों से संबंधित विवरण भी प्रस्तुत हुआ है। दिनांक 9-1-98 को जांच कार्यवाही में प्रार्थी के अनुपस्थित होने पर अगली बैठक 17-1-98 नियत की गयी उस दिन भी प्रार्थी अनुपस्थित था। अतः आगामी बैठक 24-1-98 को रखी गयी। दि. 24-1-98 को भी प्रार्थी के अनुपस्थित होने के कारण पुनः 9-2-98 को प्रार्थी की उपस्थिति जांच कार्यवाही में हुई। जांच कार्यवाही में प्रार्थी ने यह कहा कि मैंने आरोप पत्र पढ़ लिया है तथा मैं आप से पूछता हूँ कि आपको जांच अधिकारी किन नियमों के अंतर्गत नियुक्त किया गया है। जांच अधिकारी द्वारा यह कहा गया कि यह प्रश्न आरोप पत्र के क्षेत्र से बाहर है तथा आरोप पत्र के बारे

में प्रार्थी से पूछे जाने पर प्रार्थी ने यह कहा कि जब तक जांच अधिकारी की नियुक्ति संबंधी प्रावधान नहीं बतायेंगे, मैं इस प्रश्न का उत्तर नहीं दूंगा। प्रार्थी ने कार्यवाही में यह भी कहा कि मैं आपको जांच अधिकारी नहीं मान रहा हूँ। इस पर बैठक पुनः 13-2-98 को निश्चित की गयी। 13-2-98 को प्रार्थी उपस्थित था उस दिन पुनः प्रार्थी ने जांच अधिकारी नियुक्त करने के प्रावधान बताने के संबंध में कथन किया तत्पश्चात् आरोपित कर्मचारी द्वारा पूछे गये प्रश्नों का उत्तर नहीं देने पर प्रस्तुति अधिकारी से पक्ष प्रस्तुत करने को कहा गया जिस पर दस्तावेज प्रस्तुत किये गये तथा साक्षी प्रस्तुत करने के लिए समय दिया गया। अगली बैठक 25-2-98 को रखी गयी। 25-2-98 को प्रार्थी बैठक में उपस्थित नहीं हुआ। गवाहों के कथन उस दिन की कार्यवाही में लेखबद्ध किये गये तत्पश्चात् जांच रिपोर्ट 6-3-98 को प्रेषित की गयी। प्रार्थी को कारण बताओ नोटिस जारी किया गया। प्रार्थी के विरुद्ध नौकरी से बर्खास्तगी की शास्ति प्रस्तावित करते हुए कारण बताओ नोटिस जारी किया गया। प्रार्थी ने उस नोटिस का जवाब दिनांक 6-5-98 को प्रस्तुत किया। तत्पश्चात् अनुशासनात्मक अधिकारी ने अपने आदेश में मानवीय दृष्टिकोण अपनाते हुए श्री बुंदेला को नौकरी में बने रहने का एक अवसर देते हुए नौकरी से बर्खास्तगी की प्रस्तावित शास्ति के स्थान पर एक वेतन वृद्धि कम करने की शास्ति स्थाई रूप से लगाने के आदेश दिये। अपील का आदेश दिनांक 25-7-2000 को पारित हुआ जो पत्रावली में संलग्न है जिसमें प्रार्थी के द्वारा उठायी गयी आपत्तियों पर विचार करते हुए अपील निरस्त करने का आदेश दिया गया।

8. उपरोक्त विवेचन व दस्तावेजी साक्ष्य के अवलोकन से यह स्पष्ट होता है कि प्रार्थी के विरुद्ध की गयी विभागीय जांच में प्रार्थी को बार-बार उपस्थित होने के नोटिस जारी किये गये। प्रार्थी जांच कार्यवाही में उपस्थित नहीं हुआ। उसकी अनुपस्थिति के कारण जांच कार्यवाही बार-बार स्थगित की गयी। अंत में दिनांक 9-2-98 को प्रार्थी के जांच कार्यवाही में उपस्थित होने पर कार्यवाही आरंभ हुई परंतु कार्यवाही विवरण से यह स्पष्ट होता है कि प्रार्थी द्वारा आरोपों के संबंध में कोई जवाब नहीं दिया गया बल्कि जांच अधिकारी की नियुक्ति के संबंध में प्रावधान बताने को कहा तथा यह कहा कि मैं आपको जांच अधिकारी नहीं मान रहा हूँ। इन परिस्थितियों में पुनः कार्यवाही स्थगित हुई आगामी दिनांक को भी प्रार्थी उपस्थित था परंतु प्रार्थी द्वारा पुनः जांच अधिकारी की नियुक्ति को ही प्रश्नगत किया गया है। अतः उस दिन दस्तावेजी साक्ष्य प्रस्तुत होने के उपरांत गवाहों के लिए कार्यवाही स्थगित की गयी परंतु अगली तारीख पर प्रार्थी ने कार्यवाही में भाग नहीं लिया, जिसकी प्रार्थी को सूचना थी। अतः उसकी अनुपस्थिति में कार्यवाही हुई तथा जांच रिपोर्ट तदनुसार तैयार कर प्रस्तुत की गयी। अनुशासनात्मक अधिकारी ने दंडादेश पारित करने से पूर्व प्रार्थी को कारण बताओ नोटिस भी दिया जिसका जवाब प्रार्थी की ओर से दिया गया। अतः उपरोक्त दस्तावेजों से यह साबित होता है कि प्रार्थी को विभागीय जांच में बचाव व सुनवाई का पूर्ण अवसर दिया गया तथा प्राकृतिक न्याय के सिद्धांतों की भी पालना की गयी। प्रार्थी द्वारा बार-बार अवसर दिये जाने के पश्चात् भी जांच कार्यवाही में भाग नहीं लेने पर अंत में एकपक्षीय कार्यवाही उसके विरुद्ध की गयी। जहां तक जांच अधिकारी के संबंध में जो आपत्ति की गयी है उस बारे में पत्रावली पर ऐसी कोई साक्ष्य नहीं है जिससे

यह प्रकट होता हो कि जांच अधिकारी प्रार्थी से किसी भी प्रकार से प्रिज्युडिस हो। अतः विभागीय जांच कार्यवाही विधि-सम्मत व फेयर एवं प्रॉपर होना साबित होता है।

9. जहां तक प्रार्थी के विरुद्ध पारित दंडादेश का प्रश्न है, प्रार्थी का यह कथन है कि उसके विरुद्ध पारित दंडादेश दिनांक 10-2-2000 अनुपातिक रूप से अत्यधिक है। अतः निरस्त किया जावे। रिकॉर्ड के अवलोकन से यह प्रकट होता है कि प्रार्थी के विरुद्ध नौकरी से बर्खास्तगी करने की शास्ति प्रस्तावित की गयी थी परंतु उसके जवाब देने के पश्चात् प्रस्तावित शास्ति के स्थान पर एक वेतन वृद्धि कम करने की शास्ति स्थाई रूप से लगाने के आदेश दिये गये हैं। पत्रावली पर उपलब्ध दस्तावेजी साक्ष्य से यह साबित नहीं होता है कि प्रार्थी के विरुद्ध जो शास्ति अधिरोपित की गयी है, वह अनुपातिक रूप से अत्यधिक हो। अतः उक्त दंडादेश में हस्तक्षेप किये जाने का कोई विधिक आधार प्रकट नहीं होता है। अतः उपरोक्त तथ्यों एवं परिस्थितियों में उपरोक्त संपूर्ण विवेचन के आधार पर निम्न आदेश-अवार्ड पारित किया जाता।

आदेश-अवार्ड

फलतः श्रम विभाग केंद्र सरकार की ओर से प्रेषित विवाद का उत्तर इस प्रकार से दिया जाता है कि अप्रार्थी नियोजक सीनियर डिबीजनल मैनेजर, एल आई सी ऑफ इंडिया, जोनल ऑफिस, रानाडे मार्ग, अजमेर द्वारा आदेश दिनांक 10-2-2000 से प्रार्थी रमेश चंद्र बुदेल की एक वार्षिक वेतन वृद्धि कम किया जाना उचित एवं वैध है। अतः प्रार्थी रमेश चंद्र अप्रार्थी से अथवा इस न्यायालय से कोई राहत पाने का अधिकारी नहीं है।

मनोज कुमार व्यास, न्यायाधीश

नई दिल्ली, 12 अक्टूबर, 2011

का.आ. 3234.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत मैसर्स मैगनी ओर इंडिया लिमिटेड बैलाडोंगरी खान एवं उक्वा खान नागपुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 83/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2011 को प्राप्त हुआ था।

[सं. एल-27012/1/2006-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th October, 2011

S.O. 3234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 83/2006) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MO(I) Ltd., Beldongri Manganese Mines, U kwa Manganese Mines of MOIL, Nagpur and

their workmen, which was received by the Central Government on 12-10-2011.

[No. L-27012/1/2006-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/83/2006 Date: 29-8-2011.

- Party No. 1 (a) :** The General Manager(P),
M.O. (I). Ltd., 3 Mount Extension,
Sadar, PO Box No. 34, Nagpur - 440001
- (b) :** The Mines Manager,
Beldongri Manganese Mines of MOIL,
PO Satak, Tq. Parseoni, Distt. Nagpur.
- (c) :** The Mines Manager,
Ukwa Manganese Mines of MOIL,
PO Ukwa, Distt. Balaghat Nagpur.

Versus

- Party No. 2 :** Shri Purandas
S/o. Sh. Lataru Tandekar,
R/o. MOIL Beldongri Mine,
Post Satak, Tah. Parseoni,
Distt. Nagpur.

AWARD

(Dated: 29th August, 2011)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Manganese Ore India Limited and their workman, Shri Purandas Lataru Tandekar, for adjudication, as per letter No. L-27012/1/2006-IR(M) dated 17-10-2006, with the following schedule :—

"Whether the action of the management of MOIL through its Mines Manager, Beldongri Manganese Mines of MOIL, PO Satak, Tq. Parseoni Distt. Nagpur, Mines Manager, Ukwa Manganese Mines of MOIL, PO Ukwa Distt. Balaghat, Chairman/Managing Director, MOIL, Nagpur, General Manager (P) MOIL, Nagpur in terminating the services of Shri Purandas S/o Lataru Tandekar R/o Beldongri Mines is legal and justified? If not, what relief the workman is entitled to?"

2. After receipt of the reference, the employee and the management of MOIL were noticed to file the statement of claims and written statement respectively. In response to the notice, the employee Shri Purandas (hereinafter referred as the workman) and the management MOIL filed the statement of claim and written statement respectively.

3. The case of the workman according to the statement of claims is that in the year 1980 he was appointed as a labour with Manganese Ore India (MOIL) and he was promoted as Cap-Lamp room Attendant in 1993 and thereafter, he was elected as the Branch Secretary of the Union, "Rashtriya Manganese Mazdoor Sangh" and his entire service record was clean and excellent and while he was working as the Cap-Lamp room Attendant at Beldongri Mines, he had same quarrel with a lady, namely Mrs. Kalpana Randive on 11-11-2003 and on 11-11-2003, the said lady with 50 armed men came to his house at 9.30 p.m. and abused and assaulted his wife and ransacked his house, so his wife reported about the incident immediately in the Police Station and on 13-11-2003, an inquiry was made against Mrs. Kalpana, who was suspended during the enquiry and after the enquiry, the witnesses to the inquiry were transferred and Mrs. Kalpana rejoined her duty and she was not punished. The further case of the workman is that on 17-12-2003, one charge sheet was issued against him by the Mines Manager, on the allegations of abusing Mrs. Kalpana and an Inquiry Officer was appointed for conducting the enquiry and the said enquiry was not done in accordance with law and observing the principles of natural justice and on 18-5-2005, 2nd show-cause notice was issued to him in the said departmental enquiry, to which, he submitted his show cause on 30-6-2005 and on 17-7-2005, transfer order was issued, whereby, he was transferred to Ukwa Mines in the district of Balaghat (M.P.) and in that transfer order, his name and designation were wrongly mentioned and on 18-7-2005, he made a representation to the authority for cancelation of his transfer, on the ground of his wife being a mental patient and undergoing treatment under a renowned doctor of Nagpur, but the authority did not consider his representation and even though Mrs. Kalpana was neither transferred nor punished, he was transferred by way of punishment and in the said departmental enquiry, the Inquiry Officer acted according to his own whim and with biased mind against him. It is further pleaded by the workman that the transfer order did not bear his name and designation and as such, it can be held that he was not transferred and before taking action against him, the management did not discuss the matter with the Secretary General of the Union, in accordance with the agreement arrived at by the Union and the General Manager (Personnel) and finding no other alternative, he approached the Hon'ble High Court for redressal, by filing Writ Petition No. 5845 of 2005 and on 21-11-2005, the Hon'ble High Court granted him liberty to make representation to the management and accordingly he submitted a representation for cancellation of his transfer dated 17-7-2005, but, instead of considering the representation, a charge sheet dated 31-8-2005 was submitted against him by the Mines Manager, Ukwa Mines, MOIL, on the allegation of remaining absent illegally, but along with the charge sheet any document nor the list of witnesses was supplied to him and he replied to the said

charge sheet on 12-9-2005, denying the allegations levelled against him and not satisfied with his reply, a departmental enquiry was initiated, but he was not intimated about the appointment of the Inquiry Officer and on 4-10-2005, he received a letter from Shri N. Pagnis, whereby, he was intimated about the date of enquiry and thereafter, he submitted a letter dated 7-10-2005 demanding the relevant documents, but the Inquiry Officer completed the enquiry behind his back and the enquiry was not conducted in consonance with the principles of natural justice and the management witnesses were not examined in his presence and he was not granted an opportunity to cross-examine the management witness or to lead evidence in his defence and on the basis of the report of the Inquiry Officer, he was dismissed from service on 22-12-2005 and the said order is illegal, arbitrary and malafide and for the charge of absenteeism, punishment of termination is shockingly disproportionate and remaining absent, his pay was already deducted and his absence was condoned and therefore, double punishment could not be imposed. The workman has prayed for passing order for his reinstatement in service with continuity and full back wages, by setting aside the order of termination from services.

4. The management of MOIL has denied all the allegations made in the statement of claims in their written statement. According to the management, the penalty of termination was imposed by Mines Manager, Ukwa Mines of MOIL after duly holding the departmental enquiry, so impleading Mines Manager, Dongri Buzurg Mines of MOIL, and the General Manager Mines (P), MOIL, who were not at all concerned with the present dispute is not proper and the workman with malafide intention has tried to suppress the true incident, which led to the earlier departmental enquiry in 2003 and while the workman was working at Beldongri Mines, a charge sheet dated 17-12-2003 was issued against him for committing major misconduct of abusing Smt. Kalpana Randive, Nurse-cum-Midwife and threatening her with dire consequences on 11-11-2003 and a departmental enquiry was conducted, in which, the charges levelled against him were established and a second show cause notice was issued to him on 16/18-4-2005, to which, he submitted reply on 30-6-2005 and at that time, as there was shortage of manpower of electrical staff at Ukwa Mines, it was decided by the management to transfer the workman to Ukwa Mines and the allegations of transfer of the witnesses, non-supply of list of witnesses and documents in respect to the said enquiry are baseless and devoid of merits. It is further pleaded that the workman was transferred to Ukwa Mines vide order dated 14-7-2005 and not vide order dated 17-7-2005 and the transfer was not by way of punishment, but due to shortage of staff and the workman was relieved from Beldongri Mines on 17-7-2005, in order to join at Ukwa Mines and in the transfer order of the workman, his name and designation were correctly mentioned, as the earlier designation of the

workman i.e. Cap-Lamp room Attendant was changed to Asstt. Electrician, consequent to revision of MOIL recruitment and Promotion Rules w.e.f. 1-8-95 and the changes had been brought to the notice of the staff including the workman and on receipt of the transfer order, the workman made representation on 18-7-2005 and 24-11-2005 requesting for cancellation of his transfer, so the objections raised regarding wrong mention of the designation is frivolous and the request of the workman for cancellation of the transfer could not be acceded to, as the transfer was made due to shortage of manpower of electrical staff at Ukwa Mines and the workman was terminated from service for his misconduct which was duly established after making a full fledged enquiry against him, in which, he chose not to participate, in spite of due service of notice and the punishment was not made due to Union activities of the workman and by 24-11-2005, when the workman submitted his representation, the enquiry was already over and the documents relied on by the management in the department enquiry were the communications made to the workman and which were served on him and the same were within his knowledge and as the workman did not participate in the enquiry, there was no question of not giving him opportunity of cross-examining the management witnesses or adducing evidence by him and a communication dated 19-9-2005 was addressed to the workman intimating him about appointment of Inquiry Officer, which he chose to neglect and in spite of issuance of intimation about the date of enquiry not once but thrice, the workman did not attend the enquiry and as charges levelled against the workman were established in the enquiry, the second show cause notice was issued and thereafter the penalty of termination was passed for the major misconduct and the penalty is proper and not disproportionate and the workman never applied for leave to the controlling authority and unless leave is applied for, it cannot be unilaterally adjusted by the management and the pay was deducted for remaining absent without leave and the same does not amount to penalty and condonation of absenteeism and the enquiry conducted was just, proper and fair and the penalty of termination is just and proper and commensurate with the act of misconduct and as such, the workman is not entitled for any relief.

5. As this is a case of termination from service of the workman, after holding of a domestic inquiry, the question of the validity of the enquiry was taken up as a preliminary issue, for consideration and by order dated 21-9-2010 the enquiry was held to be valid and proper and by observing the principles of natural justice.

6. In the written notes of argument, it was submitted by the learned advocate for the workman that after completion of the examination of each and every witness for the side of the management, the enquiry officer did not grant an opportunity to the workman to cross-examine the witness and therefore, the findings of the enquiry officer

are illogical, imaginary and perverse and for not joining at the place of transfer, the order of termination from service is a harsh punishment and the same is shockingly disproportionate and otherwise, as the workman has not been paid salary for the days of his absence, the workman had already been punished and as such, the punishment of termination from service is a double punishment and the workman was transferred due to some personal enmity with a lady and the transfer was not on administrative ground and as such, the transfer was by way of punishment, for which enquiry was must and there is absolutely no evidence to support the report of the enquiry officer.

7. On the other hand, it was submitted by the learned advocate for the party no. 1 in the written notes of argument that the departmental enquiry held against the workman has already been held to be legal and proper, as per orders dated 21-9-2010 and the acts of misconduct alleged to be committed by the workman were major misconduct under the Standing Orders and the Disciplinary Authority being not satisfied with the reply of the workman to the charge sheet, decided to hold the departmental enquiry and as the workman failed to participate in the enquiry, inspite of receipt of the communication about the same an public notice, the enquiry proceeded against him ex-parte and the enquiry officer considered the statements made by the witnesses and the documents duly proved in the enquiry and came to the conclusion that the charges levelled against the workman have been proved and the findings of the enquiry officer are supported by evidence, both documentary and oral and as such, the same cannot be said to be perverse and though the workman was noticed to file his show cause against the proposed punishment, he did not give any reply within the stipulated time and accordingly, the Disciplinary Authority after due perusal of the relevant documents including the enquiry proceedings and enquiry report imposed the punishment of termination and the punishment is commensurate with the acts of misconduct and the charges of major misconduct were proved against the workman in a validly conducted departmental enquiry and the punishment is not shockingly disproportionate and the conduct of the workman is a serious case of disobedience and insubordination, which is a major misconduct and for that the punishment is proper.

8. In support of such contentions, reliance was placed on the decisions reported in (2008) 1 S.C.C.224 (L & T Komastu Ltd. Vs. N. Udaykumar).

9. Perused the record including the documents of the departmental proceedings. It is necessary to mention here that at the time of consideration of the validity of the departmental enquiry, the contentions raised regarding non-giving of scope for cross-examination of management witness and transfer of the workman as a punishment had been taken into consideration. Hence, there is no need to consider the same again.

Taking into consideration the materials on record, the written submissions made by the learned advocates for the parties regarding the perversity of the findings and the quantum of punishment, it is found that the findings of the enquiry officer are based on the evidence adduced during the enquiry and such findings are not based on any extraneous material. The enquiry officer has assigned cogent reasons in support of his findings. There is nothing on record to show that the findings are perverse.

So far the punishment is concerned, it is found that the workman was found guilty of unauthorized absenteeism and grave misconduct of insubordination and disobedience in a properly conducted departmental enquiry and as such, the imposition of the punishment of termination of service cannot be said to be harsh or shockingly disproportionate to the charges of serious misconduct. Hence, there is no scope to interfere with the punishment of termination of services imposed against the workman. Hence, it is ordered:

ORDER

The action of the management of MOIL through its Mines Manager, Beldongri Manganese Mines of MOIL, PO Satak, Tq. Parseoni Distt. Nagpur, Mines Manager, Ukwa Manganese Mines of MOIL, PO Ukwa Distt. Balaghat, Chairman/Managing Director, MOIL, Nagpur, General Manager (P) MOIL, Nagpur in terminating the services of Sh. Purandas S/o Lataru Tandekar r/o Beldongri Mines is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2011

का.आ. 3235.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 56/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2011 को प्राप्त हुआ था।

[सं. एल-12011/2/2007-आई आर (बी-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 12th October, 2011

S.O. 3235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 56/2007) of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 12-10-2011.

[No. L-12011/2/2007-IR (B-II)]

RAMESH SINGH, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Monday the 29th August, 2011

Present : A. N. JANARDANAN, Presiding Officer

Industrial Dispute No. 56/2007

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Central Bank of India and their Workmen]

BETWEEN

The General Secretary : 1st Party/Petitioner Union
 Central Bank of India Staff Union
 89, Aziz Mulk, 3rd Street, Thousand Lights
 Chennai

AND

The General Manager : 2nd Party/Respondent
 Central Bank of India
 Regional Office, Montieth Road,
 Egmore
 Chennai-600008

APPEARANCE:

For the 1st Party/Petitioner : M/s. K.M. Ramesh,
 Advocates

For the 2nd Party/Management : M/s. T.S. Gopalan & Co.,
 Advocates

AWARD

The Central Government; Ministry of Labour vide its Order No. L-12011/2/2007-IR(B-II) dated 28-9-2007 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the demand of the Union for regularizing of 14 Personal Car Drivers as mentioned in the list enclosed is just, valid and legal? If so, to what relief benefits the workmen are entitled to and what directions are necessary in the matter?”

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 56/2007 and issued notices to both sides. Pursuant to notice both the parties entered appearance through their respective counsel and filed their Claim, Counter and Rejoinder Statements as the case may be.

3. The contentions in the Claim Statement bereft of unnecessary details are as follows:

Drivers viz. (i) S/Sri V. Arumugam (ii) L. Paul (iii) T. Krishnan (iv) B. Suresh Kumar (v) D. Mohan (vi) P.

Shanmughasundaram (vii) R. Anbalagan (viii) Raghunathan (ix) R. Gunasekar (x) R. Kuppusamy (xi) Veluchamy (xii) Periyandi (xiii) Gunaseelan and (xiv) P. Suresh Kumar were discriminated and deliberately denied postings as permanent employees after several years of service as Personal Drivers of the Car of the Respondent/Bank used by the Executives. The names of the Drivers though recognized as Personal Drivers of the Executives do not appear in the muster roll of the Respondent. A salary had been paid on consolidated basis to the Executives in the guise of reimbursement of Driver salary to the Executives. Signatures of Drivers were obtained on the Cash Book Vouchers directly. In the past the Drivers were absorbed from the Personal Drivers of the Executives which practice the Respondent/Bank later stopped. There is no distinction in the duties between the Bank Drivers and the Personal Drivers. The differentiation is only to exploit the labour case and shirk the responsibilities as employer. The ownership of the Cars driven for the Executives is with the Respondent/Bank and is for the Bank's business. The Cars were also permitted for the personal use of the Executives using the Personal Drivers without additional payment. But the Drivers are not considered as Bank Staff. Even with the change of the Cars and the Executives the same Drivers were continued to be employed depriving their terminal benefits other than increments and recurring benefits. The 14 Drivers were being provided uniform, shoes, raincoats like other Sub-Staff. The 14 Drivers were recommended to the Central Office for being absorbed. The Personal Drivers are required to be present in the Bank's premises during working hours and extra hours for which OTA is paid. The whole arrangement is pretence, nominal and sham to evade compliance of various beneficial legislations and regarding payment of wages. It is exploitation of cheap labour and to deny the status of regular workman in gross injustice and unfair labour practice. On 10-12-2007, 4 Drivers viz. (i) Arumugam (ii) Paul (iii) Krishnan and (iv) Suresh Kumar were absorbed. The claim of the remaining 10 Drivers is also to be conceded. Now there are vacancies. Hence the claim.

4. The Counter Statement contentions briefly read as follows:

The Union has no *locus-standi* in the dispute. None of the Drivers is member of the Union. There is no valid ID raised. Reference is bad in law. Central Bank of India. Officers Service Regulations, 1979 *inter-alia*, Section-26 provides personal use of Bank's Car to Executives in Scale-VII, VI and V and Chief Managers (Scale-IV). Using their Personal Drivers, wages payable to whom are reimbursed to the Executives subject to limits, the drivers are engaged by them only. The Bank has no role. The wages are paid by the Executives. It is not permissible for anyone to get into the service of the Bank bypassing the legitimate claims of all eligible candidates. The 14 Drivers cannot derive any right for their absorption for which the Bank has no

obligation. Personal Drivers are not employed under the Bank, which fact is to their awareness. With providing uniform, shoes, etc. by the Executives to the Personal Drivers, Master-Servant relationship with bank cannot be inferred. Resort to Personal Drivers is not as a cost saving device. The absorption of other Personal Drivers is under normal recruitment process and the same cannot confer any right to the Personal Drivers. Bank cannot be compelled to create posts it being an exclusive prerogative of the Bank. The claim is to be rejected.

5. Rejoinder Statement averments in a nutshell are as follows:

It is not correct to say that the petitioner has no *locus-standi* and that the ID is not valid. It is not stated in ID Act that Trade Union should not espouse the cause of non-members. For the payments to the Personal Drivers, the Executives never received reimbursement from the bank. The wages were also never paid through the SB Accounts of the Executives. The 14 Personal Drivers were employment exchange registered hands as well and they stand recommended for absorption. The Personal Drivers were also paid Festival Advance. The Drivers were employed by the Bank and payments are made directly by the Bank.

6. The evidence consists of the oral evidence of WW1 and Ex.W1 to Ex.W115 on the petitioner's side and Ex.M1 to Ex.M10 with no oral evidence adduced on the Respondent's side.

7. Points for consideration are:

- (i) Whether the demand for regularization of the Personal Car Drivers is valid and legal?
- (ii) To what relief the concerned workmen are entitled?

Points (i) & (ii)

8. It is argued on behalf of the Petitioner Union by its learned counsel that the policy to regularize the Personal Drivers is not being followed by the Management. There is employee-employer relationship between the workmen and the Management as evident from the ID Cards issued. The monthly salary of the workmen is credited to the account of the concerned employee. They are Employment Exchange registered hands and have been working for years. Already 7 of their counterparts stand regularized and applying the same yardstick they are also to be regularized without being discriminated.

9. The contra arguments on behalf of the Respondent advanced by its learned counsel are that the workmen are not employees of the bank recruited by it under the norms of the recruitment. The vehicles belong to the bank. Salaries to them are paid by the Executives which are reimbursed by the bank. They had been usually considered for absorption after having to sit in competitive test and interview if they aspire by applying for the post. The policy that had been in vogue to absorb

the Personal Drivers has now been superceded and the policy has now been to make appointments in bank subject to the approval of the Government. The absorption is against the policy of public appointment as held in Uma Devi's case.

10. On behalf of the Respondent reliance was placed on the decision of the High Court of Calcutta in **ALLAHABAD BANK DRIVERS ASSOCIATION AND ANOTHER VS. UNION OF INDIA AND OTHERS (2009-III-LLJ-729)** wherein it is held that when the personal drivers are never appointed by the bank nor worked in duly sanctioned post they cannot claim absorption or regularization making them permanent as a matter of right.

11. The case of the Petitioner is that the workmen are really the employees under the bank. But their work arrangement is so contrived as to make it appear that they are not bank employees. The same is pretence, nominal and sham to evade compliance of various benefits to which they are entitled under the labour legislations in exploitation of cheap labour and in an unfair labour practice to deny them status of regular workman.

12. The contra keen contention of the Management is that under the Central Bank of India Officer's Service Regulations, 1979 personal use of bank's car by Executives is provided which they can avail by using their Personal Drivers to whom wages are paid by them and which are reimbursed to the Executives subject to limits. The Personal Drivers are engaged by the Executives only. The Personal Drivers cannot claim parity with other Personal Drivers who stood appointed after normal recruitment process only. Bank cannot be compelled to create posts.

13. In order to succeed the petitioner has to let in sufficient evidence to lead to the conclusion that they are direct employees under the bank. The arrangement of engagement as Personal Drivers was started as per 1979 rules under which the senior officials of the bank were allowed to use the cars owned by the bank using their Personal Drivers. Personal Drivers so engaged do not find their names in the muster roll of workmen. There is no appointment order issued to them. Though there had been a policy to regularize the Personal Drivers the said practice has been proved to be stopped by the Government. Even their counterpart Personal Drivers who stood regularized were so regularized only after having put to sit in competitive test and interview as a part of the normal recruitment process, when they chose to apply for the post and not otherwise. The system of senior officers of the bank using bank cars having originated in a legal manner and the engagement of the Personal Drivers having taken a legal form under valid bank policy with an antiquity as far back in 1979, in the absence of any conclusive and convincing material produced by the petitioner to show that the arrangement is pretence, sham and nominal to deny beneficial legislations to the workmen and in unfair labour practice such a contention cannot sustain. When

matters rest on policy decisions of the institution of the bank and the Government to which they are clothed with authority, due to a change in the policy decision when the workmen cannot be entitled to the benefits except in accordance with due procedures, without recourse to that procedure the relief cannot be obtained. In the present case it cannot be said that the workmen are discriminated *inter se* their counterparts when their counterparts got selected only after following the prescribed recruitment procedure. If the workmen whose case is espoused here satisfy the eligibility criteria and appear in the competitive test and interview and they emerge successful they do not meet with any taboo of being made permanent. Instead of resorting to that course they cannot claim for absorption in as much as they are not proved to be direct employees only under the Management. The mere distribution of shoes, uniform, etc. is not a circumstance to prove employee-employer relationship between them and the Management. Decision in the Uma Devi's case can be made applicable only if it is proved that they are denied benefits by way of unfair labour practice meted out on them. Here it is not an instance proved to be so in as much as the system originated in a legal manner under some sound policy of the Management and the Government. There is also nothing to show that after having originated the arrangement in a legal colour the said arrangement changed into any illegal colour or form so as to deprive the workmen of the benefits. There is no clinching material indicating some evidence, not sufficient evidence, to show that the workmen have been direct employees under the Management to seek regularization. Therefore they are not entitled to absorption and the demand thereof is not legal and valid.

14. The reference is answered accordingly.

(Dictated to the P. A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 29th August, 2011).

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :—

For the 1st Party/Petitioner : WW1, Sri K. Venkatesan

For the 2nd Party/Respondent : None

Documents Marked :

On the Petitioner's side

Ex. No.	Date	Description
Ex. W1	28-3-1987	Circular issued by the Asstt. General Manager (PRS), Central Office, Mumbai of the 2nd Party to all zones
Ex.W2	22-6-1988	Circular issued by the Asstt. General Manager (PRS), Central Office, Mumbai of the 2nd Party to all zones

Ex.W3	28-12-1990	Circular issued by the Regional Office, Central Bank of India to all offices in Madras and Trichy Region of Central Bank of India Re: calling for application for recruitment of Drivers in Sub-staff cadre
Ex.W4	10-5-1993	Circular from Zonal Office, Chennai to all Respondent/Management's/CM's re: recruitment of drivers in Sub-staff cadre
Ex.W5	25-3-1998	Letter from Central Office of 2nd Party to Zonal Office, Chennai of 2nd Party reg. Reimbursement of uniform and shoes supplied to Personal Drivers
EX.W6	4-9-2003	Letter from Zonal Office, Chennai of 2nd Party to all Regional Offices/ELBs/VLBs calling particulars of Personal Drivers
EX.W7	30-1-2004	Office Memorandum reg. Details of extra payments made to Sub-staff/Personal Drivers and Local Conveyance
EX.W8	21-12-2004	Letter of North Eastern Region, Central Bank Employees Union regarding the decisions of Guwahati High Court Supreme Court of India in respect of absorption/appointment of Personal Drivers as Driver/Peon
Ex.W9	23-3-2005	Letter from 1st Party to Assistant Commissioner of Labour (Central)-II, Chennai
Ex.W10	10-5-2006	Letter from 1st Party to Assistant Commissioner of Labour (Central)-II, Chennai
Ex.W11	10-5-2006	Minutes of discussion held before the Assistant Commissioner of Labour (Central)-II, Chennai
Ex.W12	24-7-2006	Letter of 1st Party to Assistant Commissioner of Labour (Central)-II, Chennai
Ex.W13	XXXX	Statement showing the details of years of service of the Personal Drivers
Ex.W14	16-5-2008	List of Personal Drivers appointed as Driver/Peon by Indian Bank
Ex.W15	17-4-2009	Letter of Central Office, Mumbai of 2nd Party to all Zonal Offices regarding details of Personal Drivers
Ex.W16	18-3-1999	Service particulars of R. Gunaseelan, Personal Driver

furnished by the Regional Manager of 1st Party

Ex.W17	21-8-1999	Letter from R. Gunaseelan to Regional Manager of the 2nd Party with endorsement made therein	Ex.W38	22-11-1999	Letter submitted by B. Suresh Kumar to Chief Manager of 2nd Party
Ex.W18	10-9-2001	Letter from R. Gunaseelan to Regional Manager of the 2nd Party	Ex.W39	3-11-2001	Letter submitted by B. Suresh Kumar to the Asstt. General Manager of 2nd Party
Ex.W19	30-4-2003	Service Certificate issued by the Regional Manager of 2nd Party to R. Gunaseelan	Ex.W40	14-2-2009	Appointment Order of B. Suresh Kumar issued by the General Manager, Zonal Office, Chennai of 2nd Party
Ex.W20	15-7-2003	Letter from R. Gunaseelan to the Regional Manager of 2nd Party	Ex.W41	10-6-1999	Certificate of service issued by the Regional Manager of the 2nd Party to V. Arumugam
Ex.W21	XXXX	Savings Account details of T. Krishnan	Ex.W42	XXXX	Application submitted by V. Arumugam to the Second Party
Ex.W22	17-5-1993	Identity Card issued to T. Krishnan	Ex.W43	15-3-2001	Letter from Regional Office of the 2nd Party to V. Arumugam regarding test for recruitment of Drivers
Ex.W23	17-5-1993	Application submitted by T. Krishnan	Ex.W44	15-5-1993	Application submitted by V. Arumugam to the 2nd Party
Ex.W24	XXXX	Conduct Certificate issued to T. Krishnan	Ex.W45	9-10-1996	Representation submitted by V. Arumugam to the Zonal Manager, Chennai of the 2nd Party
Ex.W25	19-5-1993	Application submitted by T. Krishnan with remarks by Chief Manager of the 2nd Party	Ex.W46	13-1-2004	Request for sanction of Festival Advance submitted by V. Arumugam to the Chief Manager, Chennai of the 2nd Party
Ex.W26	19-5-1993	Letter from Chief Manager to Staff Department of the 2nd Party re. T. Krishnan	Ex.W47	8-12-2007	Appointment Order of V. Arumugam issued by the General Manager, Zonal Office, Chennai of 2nd Party
Ex.W27	31-1-1996	Certificate issued by the Chief Manager to T. Krishnan	Ex.W48	8-1-1991	Service and Conduct certificate issued to L. Paul by the Chief Manager, Chennai of the 2nd Party
Ex.W28	20-7-1996	Certificate issued by Chief Manager to T. Krishnan	Ex.W49	9-1-1991	Application submitted by L. Paul to the 2nd Party, the Management
Ex.W29	17-5-1997	Conduct Certificate issued to T. Krishnan	Ex.W50	9-1-1991	Covering letter of chief Manager forwarding the application of L. Paul to Regional Office of the 2nd Party
Ex.W30	27-7-1998	Certificate issued to T. Krishnan	Ex.W51	13-04-1991	Interview call memo to L. Paul by the Chief Manager of 2nd Party to attend the test/interview
Ex.W31	13-3-2001	Conduct Certificate	Ex.W52	17-05-1993	Application submitted by L. Paul to the 2nd Party
Ex.W32	9-7-2001	Certificate issued to T. Krishnan	Ex.W53	17-05-1993	Service and Conduct Certificate issued to L. Paul by Chief Office of the 2nd Party
Ex.W33	19-06-2002	Application submitted by T. Krishnan	Ex.W54	18-05-1993	Service and Conduct Certificate issued to L. Paul by the Chief Manager of the 2nd Party
Ex.W34	XXXX	Statement of extended hours of working for payment details made to T. Krishnan relating to the period 1998 to 2000			
Ex.W35	18-5-1993	Application submitted by B. Suresh Kumar			
Ex.W36	14-9-1996	Letter submitted B. Suresh Kumar to the Zonal Manager of the 2nd Party			
Ex.W37	16-12-1997	Certificate of service issued by Asstt. General Manager of 2nd Party to B. Suresh Kumar			

Ex.W55	23-6-2001	Service and Conduct Certificate issued to L. Paul by the General Manager of the Second Party	Ex.W70	6-6-1992	Letter of the Chief Manager, Zonal Office of the 2nd Party to PRS Department, Regional Office, Trivandrum of the 2nd Party
Ex.W56	11-9-2001	Requisition letter submitted by L. Paul to the General Manager of the 2nd Party for sanction of Festival Advance	Ex.W71	4-3-1993	Letter of Regional Manager of Trivandrum of to Asstt. General Manager of Chennai of the 2nd Party
Ex.W57	6-12-2007	Appointment Order of L. Paul issued by the General Manager, Zonal Office, Chennai of 2nd Party	Ex.W72	14-5-1993	Letter of Regional Manager of Trivandrum of 2nd Party to Zonal Office, Chennai of the 2nd Party regarding recruitment of Drivers in Sub-Staff cadre.
Ex.W58	18-5-1993	Service and Conduct Certificate issued to D. Mohan by the Chief Manager of the 2nd Party	Ex.W73	31-1-1994	Service and Conduct Certificate issued to P. Suresh Kumaran Nair by the Regional Manager of the 2nd Party
Ex.W59	13-8-1994	Service and Conduct Certificate issued to D. Mohan by the Chief Manager of the 2nd Party	Ex.W74	30-12-1994	Letter of K. Sankra Iyer to the Chief Manager, Central Office, Bombay of the 2nd Party regarding Driver vacancy
Ex.W60	18-12-1997	Service and Conduct Certificate issued to D. Mohan by the Chief Manager of the 2nd Party	Ex.W75	XXXX	Service and Conduct Certificate issued to P. Suresh Kumaran Nair by the Asstt. General Manager of the 2nd Party
Ex.W61	14-12-1998	Requisition submitted by D. Mohan to the Chief Manager of 2nd Party for sanction of Marriage Loan	Ex.W76	30-12-1994	Service and Conduct Certificate issued to P. Suresh Kumaran Nair by the Chief Office of the 2nd Party
Ex.W62	17-08-2000	Requisition submitted by D. Mohan to the Chief Manager of Second Party for sanction of Vehicle Loan	Ex.W77	20-4-1995	Letter of Regional Manager, Trivandrum of the 2nd Party to Zonal Office, Chennai of 2nd Party regarding recruitment of Drivers in Sub-Staff cadre
Ex.W63	5-10-2000	Service and Conduct Certificate issued to D. Mohan by the Chief Manager of the 2nd Party	Ex.W78	3-6-1995	Service and Conduct Certificate issued to P. Suresh Kumaran Nair by the Regional Manager, Trivandrum of the 2nd Party
Ex.W64	6-7-2001	Letter submitted by D. Mohan to the Chief Manager of 2nd Party for issuance of one set of Uniform	Ex.W79	14-9-1996	Letter of Regional Office of 2nd Party to the Zonal Manager, Chennai of 2nd Party regarding recruitment of Drivers in Sub-Staff cadre
Ex.W65	4-9-2001	Letter submitted by D. Mohan to the Chief Manager of the 2nd Party for supply of Shoes	Ex.W80	27-9-1997	Service and Conduct Certificate issued to P. Suresh Kumaran Nair by the Regional Manager, Trivandrum of the 2nd Party
Ex.W66	17-4-2003	Service and Conduct Certificate issued to D. Mohan by the Chief Manager of the 2nd Party	Ex.W81	18-7-1998	Service and Conduct Certificate issued to P. Suresh Kumaran Nair by the Regional Manager, Trivandrum of the 2nd Party
Ex.W67	XXXX	Statement of extended hours of working for payment details made to D. Mohan relating to the period Oct. 2003	Ex.W82	17-2-1999	Letter of Regional Office, Trivandrum of 2nd Party to Zonal Office, Chennai regarding particulars of RM's Car Driver.
Ex.W68	14-2-2009	Appointment Order of D. Mohan issued by the General Manager, Zonal Office, Chennai of 2nd Party			
Ex.W69	30-9-1992	Letter of Regional Manager, Trivandrum to the Zonal Office, Madras of the 2nd Party regarding recruitment of Drivers			

Ex.W83	17-11-2001	Representation by Suresh Kumaran Nair to the Zonal Manager, Chennai of the 2nd Party	Ex.W96	21-4-2003	Representation submitted by N. Periyandi to the CMD of the 2nd Party regarding absorption
Ex.W84	19-6-2002	Regional Manager, Trivandrum letter to the Zonal Office, Chennai of the 2nd Party recommending P. Suresh Kumaran Nair name for appointment as Driver	Ex.W97	29-3-2003	Appreciation letter of Chief Manager, Madurai Main Branch of the 2nd Party for canvassing deposit
Ex.W85	XXXX	Identity Card of P. Veluchamy	Ex.W98	30-4-2004	Service & Conduct Certificate issued to N. Periyandi by the Chief Manager, Madurai Main Branch of the 2nd Party
Ex.W86	3-7-1996	Representation submitted by P. Veluchamy to the Zonal Manager, Chennai of the 2nd Party	Ex.W99	27-5-2004	Letter of Madurai Main Branch Manager of 2nd Party to the Pondicherry Branch of 2nd Party for payment of difference in wages
Ex.W87	29-1-1999	Representation submitted by P. Veluchamy to the General Manager, Personnel Department, Mumbai of the 2nd Party	Ex.W100	12-12-2007	Forwarding of N. Periyandi representation dated 12-12-2007 by the Chief Manager of Pondicherry Branch of the 2nd Party to the General Manager, Zonal Office, Chennai of the 2nd Party
Ex.W88	14-2-2009	Appointment Order of P. Veluchamy issued by the General Manager, Zonal Office, Chennai of 2nd Party	Ex.W101	19-12-2007	Representation submitted by N. Periyandi to the CMD of the 2nd Party regarding absorption
Ex.W89	17-2-1990	Letter of Chief Manager, Madurai Main Branch of 2nd Party to Deputy General Manager, Zonal Office, Chennai, of 2nd Party reg. Appreciation letter of N. Periyandi in maintenance	Ex.W102	14-12-2007	Service & Conduct Certificate issued to P. Raghunathan by the Asstt. General Manager of the 2nd Party
Ex.W90	19-2-1991	Letter of Branch Manager, Madurai Main Branch of 2nd Party to the Regional Office, Madurai of the 2nd Party regarding bio-data of N. Periyandi	Ex.W103	03-12-2007	Service and Conduct Certificate issued to P. Raghunathan by the Asstt. General Manager of the 2nd Party
Ex.W91	1996-Vol.I	Copy of Bank's Magazine—CENTRALITE—regarding appreciation of N. Periyandi for canvassing deposits	Ex.W104	14-12-2007	Service and Conduct Certificate issued to P. Raghunathan by the Asstt. General Manager of the 2nd Party
Ex.W92	20-2-1991	Letter of Branch Manager, Madurai Main Branch of the 2nd Party to Regional Office, Madurai of the 2nd Party forwarding an application of Driver absorption	Ex.W105	16-4-2006	Service and Conduct Certificate issued to R. Anbazhagan by the Asstt. General Manager of the 2nd Party
Ex.W93	16-12-1995	The Chief Manager, Madurai Main Branch of 2nd Party appreciation letter to N. Periyandi for canvassing deposits	Ex.W106	12-4-2007	Service and Conduct Certificate issued to R. Anbazhagan by the Asstt. General Manager of the 2nd Party
Ex.W94	18-6-2002	Particulars of Driver N. Periyandi submitted to the Regional Office, Madurai of the 2nd Party by the Manager of Madurai Main Branch of the 2nd Party	Ex.W107	14-2-2009	Letter Chief Manager, Pondicherry Branch of the 2nd Party to the General Manager, Zonal Office, Chennai
Ex.W95	14-8-2002	The Senior Manager, Tallakulam Branch of the 2nd party appreciation letter to N. Periyandi for canvassing deposits	Ex.W108	25.1-2010	Letter from 1st Party to 2nd Party regarding filling up of existing vacancies
			Ex.W109		Identity Card issued to N. Periyandi by the Employment Exchange

Ex.W110 -	Identity Card issued to R. Gunaseelan by the Employment Exchange
Ex.W111 -	Ambulance Course Certificate issued to V. Arumugam
Ex.W112 -	Identity Card issued to V. Arumugam by the Employment Exchange
Ex.W113 -	Identity Card issued to N. Raghunathan by the Employment Exchange
Ex.W114 30-5-2010	Letter from Central Bank of India to all Zonal Offices
Ex.W115 22-6-2010	Letter from Petitioner Union to General Manager, Central Bank of India, Zonal Office, Chennai

On the Management's side

Ex.No.	Date	Description
Ex.M1	-	Central Bank of India (Officer) Service Regulations - Extract - Regulation 26
Ex.M2	17-9-1993	Respondent's Circular — Reimbursement of Payment made by Executives to their Personal Drivers
Ex.M3	1-11-1995	Respondent's Circular - Payment of daily batta to Personal Drivers of Officers on outstation duties
Ex.M4	23-5-2000	Respondent's Circular — Reimbursement of Payment made by Executives to their Personal Drivers
Ex.M5	24-5-2000	Respondent's Circular — Reimbursement of payment made by executives to their Personal Drivers
Ex.M6	17-5-2006	Respondent's Circular - Instructing that no extra Payments shall be made to Personal/Bank Drivers Letter from General Secretary/ Organizing
Ex.M7	23-3-2005	Secretary, AICBEC, addressed to Asstt. Labour Commissioner (C. II), Chennai
Ex.M8	24-3-2006	Respondent's reply to Asstt. Labour Commissioner (C), Chennai
Ex.M9	23-6-1997	Proposal for absorption of personal drivers engaged by the executives of the banks on regular establishment of the banks
Ex.M10	23-3-1997	Scheme for absorption of personal drivers

नई दिल्ली, 13 अक्टूबर, 2011

का.आ. 3236.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत मैसर्स परेल इन्वेस्टमेंट एवम् हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड कटक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 4/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-9-2011 को प्राप्त हुआ था।

[सं. एल-30011/42/2011-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 13th October, 2011

S.O. 3236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2007) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Parel Investment & Trade Co. & Hindustan Petroleum Corporation Ltd. Cuttack, and their workman, which was received by the Central Government on 30-9-2011.

[No. L-30011/42/2011-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR**

Present : Shri J. Srivastava, Presiding Officer, C.G. I.T.-cum-Labour Court, Bhubaneswar

Tr. Industrial Dispute Case No. 4/2007

Date of Passing Award- 14th July, 2011

Between :

1. Sh. C.H. Prasad, Plant-in-Charge, M/s. Parel Investment & Trade Co. Ltd. Custodian-Hindustan Petroleum Corporation Ltd., L.P.G. Filling Plant, Sikharpur, Cuttack.
2. Sh. G. Veera Rajulu, Custodian—M/s. Parel Investment & Trading Co. Ltd., Custodian Hindustan Petroleum Corporation Limited, 48.9.19 Operative Colony, Visakhapatnam—530016.
3. Sh. S.K. Sen, Regional Manager, Hindustan Petroleum Corporation Limited, 57, Forest Park, Bhubaneswar-09.
4. Sh. M. Debi Prasad, Dy. General Manager (East), M/s. Hindustan Petroleum Corporation Ltd., 6, Church Lane, Post Box No. 146, Kolkata—01.

... Ist Party-Managements

AND

Their workman represented through the General Secretary, Cuttack New Malgodown Mazdoor Union, Sikharpur, Cuttack—753 003

....2nd Party-Union

Appearances :

M/s. B.C. Bastia, ...	For the 1st Party-Management Advocate	No. 1 & 2.
None ...	For the 1st Party-Management	No. 3 & 4.
None ...	For the 2nd Party- Union.	

AWARD

The Government of Orissa in the Department of Labour and Employment has referred an industrial dispute existing between the Management of M/s. Parel Investment and Trading Co. Limited, Custodian-Hindustan Petroleum Corporation Limited, L.P.G. Filling Plant, Sikharpur, Cuttack and their workman Shri Bishnu Charan Rout & nine others in exercise of the powers conferred by sub-section (5) of Section 12 and with clause (d) of sub-section(1) of Section 10 of the Industrial Disputes Act, 1947 vide their letter No. II/1-382/88-6937. L., dated 22nd May, 1989

2. The dispute as referred is mentioned below:

“Whether the termination of services of S/Sri Bishnu Charan Rout, Minaketan Barik, Kanduri Charan Barik, Dushasan Rout, A.P. Arana, S. Mohan Rao, Sukanta Charan Sahu, S. Gopal, Muralidhar Barik and Radhamohan Biswal by the management of M/s. Parel Investment and trading Co. Ltd., Custodian - M/s. Hindustan Petroleum Corporation Limited, Sikharpur, Cuttack is legal and /or justified? If not to what relief they are entitled?”

3. This reference was earlier pending before the Labour Court, Bhubaneswar but later sent to this Court vide order dated 1-2-2007 on taking over the Management by the Government of India.

4. The 2nd Party filed statement of claim and stated that they were appointed by the East Coast Gas Company directly for loading, unloading and handling of cylinders and were paid on piece rate basis by the Management. In the beginning the handling, loading and unloading work were being done together by one set of workers, but when the demand for LP gas increased, the 1st Party-Management gradually engaged more persons for the said work. Subsequently the 1st Party-Management divided the 2nd Party-workman for engagement in separate batches for different type of works, but that was not rigidly followed. The total number of workman engaged for handling work rose to ten and those engaged for

loading and unloading of cylinders to and from truck rose to seven. There were also seven security guards engaged to watch the property of the filling plant of the 1st Party-Management. All the above 24 workmen were directly under the supervision, direction and control of the 1st Party-Management. In the year 1979 E. S. I. scheme was introduced for these workmen in the Cuttack plant. However, the 1st Party- Management did not include the workmen for loading and unloading work under the E.S.I scheme. Only the 2nd Party-workmen engaged for handling work and the security guards were included under the E.S.I scheme. In October, 1982 the Provident Fund Scheme was implemented. The loading and unloading workers were not included in the said scheme. This was done with an intent to avoid payment of contribution to E.S.I and P.F. Scheme. The 2nd Party-workman were always performing the work under the direction, supervision and control of the 1st Party- management. They were never the workmen of any intermediary or contractor. This will be proved by the attendance and wage payment registers maintained by the 1st Party-Management, if produced. In the year 1987 the disputant-workmen came to know that one L.P.G. filling plant is going to be established in a bigger scale at Khurda Road (Jatni). After its completion they submitted their representation for their transfer to Khurda Road Plant. The Regional Manager of the Hindustan Petroleum Corporation Limited intimated them vide letter dated July 10, 1987 that unless their names are sponsored by the local Employment Exchange it would not be possible to recruit them, while they need not be recruited afresh, but were to be absorbed at Khurda Road plant. In the aforesaid letter the 1st Party-Management has not mentioned that the 2nd Party-workmen were the workmen of the contractor. Later the 1st Party-Management informed the District Labour Office that the 2nd Party-workmen were not their employees but the employees of one Minaketan Barik who was a contractor of the company at the Cuttack LPG Filling Plant and avoided responsibility. The 1st Party-Management had failed to produce any license under the Contract Labour (Regulation & Abolition) Act, 1970 for engaging contract labourer numbering more than 20 for handling, loading, unloading and security work. The 2nd Party-workmen received their wages upto the month of June, 1987, but they continued in their employment under the 1st Party-Management till 7-2-1988 without payment of wages. Suddenly they were not allowed to work from 8-2-1988 and their services were terminated by the Plant-in-charge of the 1st Party-Management. The 1st Party-Management at the back of the 2nd Party-workmen obtained signatures of Mina Ketan Barik on certain documents under pressure, coercion and threat to lose service without revealing the matter to him. Shri Mina Ketan Barik was himself a workman and earning wages like other 2nd Party-workmen. They raised an industrial dispute and during the pendency of the conciliation proceedings the 1st Party-Management terminated their

services without following the provisions of law. The 1st Party-Management did not give any written notice or pay any wages for the period of notice. So the action of the 1st Party-Management in terminating their services is illegal, unjustified and mala fide. They deserve to be reinstated in their services with full back wages and other service benefits. It has also been stated at the outset that initially East Coast Gas Company was a partnership firm and was appointed by the Caltex India Limited as distributor for sale of Liquefied Petroleum Gas packed in cylinders for domestic, commercial and industrial customers. Subsequently East Coast Gas Company owned by M/s. Parel Investment and Trading Company Limited and the Caltex India Limited were acquired and vested in Caltex Oil Refining (India) Limited and then amalgamated with Hindustan Petroleum Corporation Limited. In the year 1979 the Government of India by Act. No. 29 of 1979 took over the management of M/s. Parel Investment and Trading Company Limited and appointed Hindustan Petroleum Corporation Limited as custodian with a view to nationalization of the business of Bottling, Transporting, Marketing and Distribution of Liquefied Petroleum Gas in the public interest.

5. The 1st Party-Management in their written statement have stated that handling, loading and unloading works are clearly different jobs assigned to different contractors who have raised separate bills for jobs undertaken by them. Shri Minaketan Barik was the contractor engaged for handling work for which he has raised bills and received payments. None of his bills indicate that he was engaged for loading and unloading of cylinders. The loading and unloading work at all relevant time was being done by the Transport Contractor. The allegation that 24 workers were engaged by the 1st Party-Management under its supervision, control and direction is totally false and fabricated. The 2nd Party-workmen were in-fact working under Shri Mina Ketan Barik, Contractor under whose direct control and supervision they discharged their duties. The contractor was required to maintain a log book to make entries in it with regard to the work undertaken by him through his staff on daily basis for raising his bills at the end of the month. It is a blatant lie that the Plant-in-charge of the 1st Party-Management was distributing the wages to the 2nd Party-workmen. The payments to the contractor were made through the Bank who in turn used to pay to his employees. The allegation with regard to taking of blank signatures from the contractor under threat and coercion is ill-founded and falsely motivated. The names of the 2nd Party-workmen did not appear in the attendance register and payment of wages register of the 1st Party-Management. The contract also stipulated that the representative of the contractor will remain present at the work site to control his staff to carry out their work. The 2nd Party-workmen being under the employment of the

contractor can in no way be absorbed in the new plant at Jatni as a matter of course. The 1st Party-Management being a Public Sector Undertaking has to fulfil certain statutory norms of employment while employing the workmen. The 2nd Party-workmen were informed to get their names sponsored by the Local Employment Exchange. The 1st Party-Management is not required in the facts and circumstances of the case to apply for licence under the Contract Labour (Regulation & Abolition) Act, 1970. Therefore the 2nd Party-workmen are not entitled to any relief.

6. On the pleadings of the parties following issues were framed :

ISSUES

1. Whether the termination of Sarvasree Bishnu Charan Rout, Minaketan Barik, Kanduri Charan Barik, Dushasan Rout, A.P. Arana, S. Mohan Rao, Sukanta Kumar (Charan) Sahu, S. Gopal, Muralidhar Barik and Radhamohan Biswal by the management of M/s. Parel Investment and Trading Co. Ltd., Custodian — M/s. Hindustan Petroleum Corporation Limited, Sikharpur, Cuttack is legal and/or justified?
2. To what relief the workmen are entitled?
7. The 2nd Party-Union has examined three witnesses namely Shri Bishnu Charan Rout as W.W.-1, Shri Mina Ketan Barik as W.W.-2 and Shri P.Brundaban Sharma as W.W.-3 and filed and proved documents marked as Ext.-A to Ext.-S.
8. The 1st Party-Management has also examined three witnesses namely Shri Bharat Chandra Gochhayat as M.W.-1, Shri Rabindra Sethi as M.W.-2 and Shri C.H. Prasad as M.W.-3 and proved documents marked as Ext.-1 to Ext.-12.

FINDINGS

Issue No. 1

9. It is the case of the 2nd Party-Union that the disputant workmen were appointed in the year 1979 by the erstwhile East Coast Gas Company for loading, unloading and handling of cylinders on piece rate basis. In the beginning handling, loading and unloading work was being done together, but subsequently the Management divided the work in separate batches of the workmen and the disputant workmen were engaged for handling work. In 1979 when the ESI Scheme and in 1982 when the PF scheme were introduced in the Cuttack Branch, they were included in the said scheme. They continued to work even after the East Coast Gas Company earlier owned by M/s. Parel Investment and Trading Company Limited was acquired and vested in Caltex Oil Refining (India) Limited and then amalgamated with Hindustan Petroleum Corporation Limited. The

Government of India by Act No. 29 of 1979 took over the Management of M/s. Parel Investment and Trading Company Limited and appointed Hindustan Petroleum Corporation Limited as custodian. Throughout all these years the disputant workmen were working under the supervision, direction and control of the 1st Party-Management and they were never under any intermediary or contractor. On the contrary the stand of the 1st Party-Management is that the disputant workmen were working under the contractor Shri Mina Ketan Barik. None of the disputant workman was ever engaged by the 1st Party-Management and worked under their supervision, control and direction. The 1st Party-Management has denied the employer and employee relationship with the disputant workmen.

10. From the evidence led by both the parties, oral and documentary, it is established that the disputant workmen were working under the 1st Party-Management even after taking over the Management by the Government of India and appointing M/s. Hindustan Petroleum Corporation Limited as custodian. The story of Shri Mina Ketan Barik being brought in as contractor for handling work was introduced in the year 1983. No oral or documentary evidence has been led on behalf of the 1st Party-Management to prove that prior to 1983 either the handling work or loading and unloading work was being done through any contractor. Shri Mina Ketan Barik has examined himself as W.W.-2 and has clearly stated that he never signed any agreement with the 1st Party-Management. He has admitted his "signature on Ext.-4 by stating that "signature on Ext.-4 is my mine", but the signature was put by him on asking of Prasad Babu who was the Plant-in-charge. He does not know whether any quotation was called from him and he accordingly furnished the quotation vide Ext.-4/A. He further denies that he was a contractor under the company through this quotation Ext.-4/A. The 1st Party-Management has filed only one Bill Ext.-5 of loading and unloading work for the month of May, 1987 and another bill for June, 1987 but that was not proved and exhibited in evidence. It is unexplained that when the contract was accorded and the quotation was accepted on 23-12-1983 vide Ext.-4 why the bills of work done earlier to May, 1987 were not filed? There has also not been filed any agreement made prior to 23-2-1983 regarding any contract for performance of loading, unloading or handling work on contract entered into by Shri Mina Ketan Barik with the 1st Party-Management. It is also a surprising fact that Shri Mina Ketan Barik was himself working as a labourer along-with other disputant workmen and he was never show in the documents of the 1st Party-Management as a contractor. The xerox copy of the attendance register filed by the disputant workman as Ext.-H shows the name of Shri Mina Ketan Barik as workman along with four other co-workmen. The xerox copies of the register of wages filed as Ext.-J, J/I, P, P/I, and R also show the names of Shri Mina Ketan Barik along

with some other disputant workmen. It is not disputed that the disputant workmen were covered under the ESI and P.F. Schemes and identity cards of E.S.I. and P.F. subscription slips etc. were issued in their name, photostat copies of which have been filed on record by the 2nd Party-Union as Ext.-A to Ext.-G/7. All the witnesses of the 2nd Party-Union have deposed before the Court that they were getting their wages through Prasad Babu. It was only in the year 1985 when the cheque regarding their payment came in the name of Shri Mina Ketan Barik upon which Prasad Babu told them that unless they take money from one person, it was not possible to provide work for them. W.W.-1 Shri Bishnu Charan Rout has stated in his evidence that "Prasad Babu used to draw money from the bank accompanying Mina Ketan Barik and after withdrawal of money Prasad Babu himself makes the payment. This practice continued to June, 1987". Although there is no documentary evidence that payment of wages to the disputant workmen was being made by Prasad Babu yet the totality of the evidence, both oral and documentary, led by the parties goes to establish that prior to 1985 payment of wages was being made to the disputant workmen by Prasad Babu. The 1st Party-Management has raised objection against the genuinity of the xerox copies of the attendance and wage registers as there is no mention of the name of the company and other details thereon but the same objection/plea applies to the xerox copy of the attendance register filed by the 1st Party-Management as Ext.-3 wherealso the name of the company and other necessary details are wanting. As such these documents cannot be held as false and fabricated.

11. W.W.-3 P.Brundaban Sharma was working as Clerk-cum-Typist from February, 1985 to February, 1988 under the 1st Party-Management. This fact has been admitted by M.W.-1 Shri Bharat Chandra Gochhayat in his evidence. This witness has clearly stated that Mina Ketan Barik was never working as contractor in the plant, but bills were prepared by Mr. Prasad in the name of Mina Ketan Barik and he typed out the bills as per the direction of the Management. He has also denied the fact that the workmen were working as labourer under the contractor, Shri Mina Ketan Barik.

12. The 1st Party-Management Witness No.1 Shri Bharat Chandra Gochhayat has admitted in his evidence that "Ext.-H is the attendance marked by Manager C.H. Prasad for the month of Aug. 1985. Ext.-J is the register of wages for the month of February, 1984. The Manager has written the names". Therefore the genuinity of the documents filed by the 2nd Party-Union cannot be doubted. This witness could not tell whether any bill for the period from 1-7-1987 to 8-2-1988 was submitted or not by Shri Minaketan Barik for the period the wages of the workman was paid by cheque. M.W.-2 Rabindra Sethi has stated that he knows the present applicants. They were helping in handling cylinders. Manager and supervisor

used to verify the work of the applicants. They used to work inside the factory and they were engaged by the Manager and the Supervisor. M. W.-3 C.H. Prasad was the plant in-charge of the Cuttack Filling Plant of the 1st Party-Management. He got executed the contract Ext.-4 which was signed in his presence by Shri Mina Ketan Barik. He has admitted that there was no written contract prior to 1983 for loading and unloading work. He has further stated that the Management never advertised tender in the newspaper. It used to send letters to the parties, but he could not even say as to which party he intimated the tender of handling and who was the handling contractor in 1979. He has admitted that he has not produced any record to show that Mina Ketan Barik was doing loading and unloading work in 1983. He has also not produced any other document of contract. He expressed his inability to produce any document where P.I.T.C.L entrusted handling work to any contractor. Regarding submission of bill by the contractor or the 2nd Party-workman from July, 1987 to 13-12-1988 he told that no bill was submitted by them instead he calculated the amount of work from log book of company and paid the dues by bank draft. But no record such as log book, copy of the bank draft or its receipt or any correspondence in this regard has been filed in the court. He has also stated at one place in his examination-in-chief that "the bills are depending upon the quantum of work executed by Shri Barik which varies from month to month, but the salary sheet etc. of his labour remains the same. Shri Barik fixes the salary for his labour". How can a contractor fix the salary of his labourer respective of the work done and the days on which he has done the work? All this goes to show that the disputant workmen were working under the direct control, supervision and direction of the 1st Party-Management and the plea of working under the contractor is a lame and sham plea which does not find support from the evidence on record. No license under the Contract Labour (Regulation & Abolition) Act has been taken by the 1st Party-Management for engaging workmen under contract for loading, unloading and handling work of cylinders which is a perennial nature of work. As such on this count also the theory of engagement of contract labour is falsified. The case of the disputant workmen is that they were working under the 1st Party-Management since 1979 and worked with it till 7-2-1988 before their disengagement. They were not given any notice or paid any compensation as required under law. They were ceased from the job without any reason or rhyme and when they requested for their transfer to new site at Jatni they were directed to get their names sponsored by the local employment exchange. The 1st Party-Management has not been, successful in proving that the disputant workmen were contract labourer and since no other stand with regard to their engagement by the Management has been taken they cannot be denied the status of workmen under the 1st Party-Management and thus the relation of employer and employee stands

proved between the two. In view of the above their termination from service cannot be held legal or justified by any stretch of imagination. This issue is accordingly decided against the 1st Party- Management and in favour of the 2nd Party-Union.

ISSUE NO. II

13. Since the termination of service of the disputant workmen is not justified and legal, they are liable to be reinstated in service, if they have not attained the age of superannuation as per rules of the 1st Party-Management. As the matter of termination relates back to the year 1988, nearly 23 years back, it will not justifiable if they were given back wages, but they are surely entitled to receive compensation. Considering all the facts and surrounding circumstances I award Rs. two lakhs to each of the disputant workmen as compensation. The dictates of the award shall be complied with within two months from the date of publication of the award failing which the 1st Party-Management shall also be liable to pay interest on the amount of compensation at the rate of 9% per annum.

14. The reference is answered accordingly.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अक्टूबर, 2011

का.आ. 3237.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कृष्णा ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 12/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-10-2011 को प्राप्त हुआ था।

[सं. एल-12012/371/2001-आईआर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 13th October, 2011

S.O. 3237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Krishna Gramin Bank and their workman, received by the Central Government on 13-10-2011.

[No. L-12012/371/2001-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE

Dated : 14th September, 2011

Present : Shri S. N. Navalgund, Presiding Officer

C.R. No. 12/2002

I Party

Shri Shiv Sharanappa B
Hadpad,
Bombay Management Service,
C/o Kirlosker Ferrous Industries
Ltd.,
Bevinahalli P.O. Tq & Dist
Koppal,
Karnataka State- 583234

II Party

The Chairman,
Krishna Grameena
Bank, Head Office,
MV lay out,
Golbarga- 585103

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide order No. L-12012/371/2001-IR(B-I) dated 5-2-2002 for adjudication on the following Schedule.

SCHEDULE

“Whether the action of the management of Krishna Grameena Bank Head Office, Gulbarga is justified in imposing the punishment of dismissal from service on Shri Shiv Sharanappa B Hadpad w.e.f. 4-7-2001? If not, what relief the workman is entitled?”

2. The brief facts leading to this reference and award may be stated as under :-

Shri Shivsharanappa B Hadpad (hereinafter referred to as first party for the sake of convenience) being appointed as Messenger in the Management of Krishna Grameena Bank (herein after referred as Second Party for the sake of convenience) in the year 1981 and served in that capacity at the second party's Doranahalli Branch between 1-6-1982 to 26-6-1999, while serving at Wanandurga branch was served with charge sheet dated 5-7-2000 in the following fashion and he was also served with order appointing Shri A.R. Yardon, Sr. Manager, Basvakalyan branch and Shri C.L. Reddy, Sr. Manager, Aurad Branch as Enquiry Officer and Presenting Officer respectively:

Charge Sheet

“With reference to our letter No. A & V/41 dated 11-8-1999 and your letter No..... dated 24-8-1999, it has been decided to conduct an enquiry against you in respect of following charges levelled against you for certain major lapses alleged to have been committed by you while working at Dornahalli branch.

- (1) You were unauthorisedly holding the key overnight of branch premises and cupboard/trunks containing bank records/vouchers from 30-4-1999 to 3-5-1999. Your above act is in

violation of circular instructions and staff service regulations No. 17.

- (2) On 3-5-1999, you presented a forged voucher prepared by you for Rs. 25,000 relating to SB account No. 1228 of Shri Abduls Kashimsa Math R/o Dornahalli and received the cash and thus violated the (staff) service regulations No. 18 & 19.
- (3) On 3-5-1999, you have removed the voucher cited above from the bundle before depositing in the trunk and destroyed so that the fraud should not come to the light at any point of time. Thus you have violated the (Staff) service regulations No. 18 & 19.
- (4) On 4-3-1997, you have committed a similar fraud of Rs. 5000 by presenting a forged voucher by you and receiving the proceeds by you from the SB account No. 1843. Your above act is in violation of service regulations No. 18 & 19. Subsequently on 24-8-1999 vide your letter admitted of committing the serious irregularities.

A statement of imputations based on which the charges are leveled is enclosed. You will be hearing about the date, time and venue of the enquiry from the enquiry officer directly.”

3. The enquiry officer on submitting his finding in the affirmative by his reported dated 13-4-2000, the disciplinary authority after observing the formalities of giving the hearing to the first party by order dated 26-4-2000 imposed the punishment of dismissal from service w.e.f. 5-7-2000 and in the appeal preferred by the first party the same was confirmed by the Appellate Authority by his order dated 30-9-2000. Thereafter on failure of the conciliation before the ALC, Bellary the Central Government made this reference for adjudication.

4. The first party in his claim statement asserted that when he was working at Wanandurga Branch of the second party, on 12-7-1999 he was called to the head office to enquire in to the complaint allegedly filed by a customer of its Dornahalli branch namely Shri Abdul Sa who had an account in that branch bearing SB account No. 1228 and was informed that a complaint being given by the said account holder an amount of Rs. 25,000 being debited to his account even though he has not issued any withdrawal slip or cheque on 3-5-1999 and that the cheque/voucher in that regard is not traceable and asked him what he has to say in that matter and he informed the General Manager that as a sub staff he has stitched all the vouchers on 3-9-1995 after completion of the day's business and he is not aware of any voucher missing pertaining to that day and he also gave a written statement to that effect addressed to the General Manager on that day. It is further

alleged the officers and staff at Dornahalli Branch along with authorities in the head office conspired against him to implicate him in the fraud/misappropriation committed by others though initially in this connection Shri M.K. Badasheshi who was incharge manager of Dornahalli Branch on 3-5-1999, by his letter dated 10-7-1999 addressed to the branch manager admitted that he has committed the fraud which reads as follows:

To

The Branch Manager,
Krishna Grameena Bank,
Dornahalli

Dear Sir,

Missing voucher in respect of SB 1228 dated 3-5-1999 for Rs. 25,000

With reference to the above, I Shri M.K. Badasheshi, Officer State as follows:

In connection with missing voucher incident, I had the charge of the Branch under single custody. Since it happened to be local market day i.e. Monday, heavy transactions resulted in the branch. At the time of closing day's transaction, shortage of cash at the counter was noticed. In order to make good the cash. I have debited S.B. 1228, making necessary entries without voucher, with an intention to deposit at later date. This was not possible till today.

Hence, I admit myself due to my negligence act for which I am wholly responsible. I hereby declare that the above statement is true and correct to the best of my knowledge. I humbly request to condone my mistake and assure you not to repeat such lapses in future.

Thanking you,

Yours faithfully

sd/- M.K. Badasheshi

5. The Second party after receiving the above letter suspended Shri M.K. Badasheshi vide its letter No. KGB/A&V/342 dated 22-07-1999 pending Disciplinary/Criminal proceedings and thereafter he was also served with charge sheet and a letter informing the appointment of Enquiry Officer and Presending Officer was issued to him vide letter Nos. KGB/A & V/784, KBG/A & V/785 dated 15-11-1999 and that he is unable to know the outcome of the said enquiry and suppressing this crucial letter of admission given by Shri M.K. Badasheshi, the second party started manipulating the evidence to implicate him in the fraud and on 17-7-1999 a report was submitted by Shri B.M. Raviraj, the branch manager stating that the suspect him/first party, wherein it was mentioned he/first party had presented the debit voucher on 3-5-1999 for payment on behalf of the customer and it was passed by Shri M.K. Badasheshi, being an officer working at Dornahalli branch

and who, was the incharge branch manager on 3-5-1999 when the complaint was received and he confessed he having drawn the money fraudulently by giving a letter in detail dated 10-7-1999 subsequently in collusion with the other officers of the bank manufactured evidence against him and that by an order dated 23-7-1999 he/first party was kept under suspension and thereafter deciding to hold enquiry simultaneously appointed Shri A.R. Yardoni, Sr. Manager, Basvakalyan branch and Shri C.L. Reddy, Sr. Manager, Aurad Branch as Enquiry Officer and Presenting Officer respectively and served it on him and thereafter pressure was brought on him to admit the guilt giving him an understanding that if he admits the guilt, Shri M.K. Badasheshi would reimburse the amount and he would be let off without any punishment and without filing any police complaint and thus made him to pay that amount and he being in the lowest strata of workers in the bank believing in the words of the higher authorities and by their threat and inducements a letter dated 28-7-1999 submitted by him to the effect that he has destroyed the voucher dated 3-5-1999 and that due to personal problems he had withdrew the amount forging the voucher and received the money and thereafter a letter dated 11-8-1999 came to be issued by the Manager(Audit and Vigilance) to which he was dictated to reply in a particular manner admitting and confessing to the transaction with which he has nothing to do and then the Disciplinary Authority initiated the disciplinary proceedings against him by issuance of a charge sheet wherein one more lapse of a fraudulent withdrawal of Rs. 5,000- on 4-3-1977 is included without calling for his explanation or reply to the charges and making a farce of enquiry he has been made scape goat to protect Shri M.K. Badasheshi.

6. Interalia the second party in its counter statement contended that the first party who was working at Doranahalli branch as Messenger from 1-6-1982 in the month of June, 1999 requested for a transfer to some other place and accordingly he was transferred to Wanadurga branch on 26-6-1999 and on 3-7-1999 Shri Abdulsa Kahimsa Math wrote to the bank alleging that Rs. 25,000 being illegally withdrawn from his SB Account No.1228 by somebody further asking the bank to pay him the said amount and on 23-7-1999 when an explanation was sought from the first party in this regard through his reply letter dated 28-7-1999 he admitted that he had on 3-5-1999 forged the signature of Abdulsa Kashimsa Math and received the money from the incharge branch manager, Shri M.K. Badasheshi and thereafter seeking further detailed explanation from the first party making 4 specific allegations notice dated 11-8-1999 was served on the first party and he in his reply dated 24-8-1999 admitted all the four charges and to similar notice sent to the incharge branch manager Shri M.K. Badasheshi he too admitted his negligence and thereafter a charge sheet dated 15-11-1999 was issued to the first party and the DE was conducted against him by appointing Shri A.R. Yardoni, Sr. Manager

and Shri C. L. Reddy, Sr. Manager as Enquiry Officer and Presenting Officer respectively and Enquiry Officer after recording the evidence of Shri Abdulska Kashimsa Math, Customer; Shri B. M. Raviraj, the Branch Manager; Shri B. Sharanappa and Shri Gurunath K. Kashetty and Exhibiting 13 documents, after receiving written briefs from both the sides gave his findings on 13-04-2000 charges being proved and after serving show-cause notice the impugned punishment was imposed and same has been upheld by the Appellate Authority having regard to evidence on merits.

7. My learned predecessor after completion of the pleadings framed a preliminary issue as to "whether the domestic enquiry conducted against the first party by the second party is fair and proper" and after receiving the evidence of enquiry officer examined as MW1 and exhibiting charge sheet dated 15th November, 1999; the letter dated 15-11-1999 appointing Shri A. R. Yardon as the enquiry officer; letter dated 15-11-1999 appointing Shri C. L. Reddy as Presenting Officer; notice of enquiry dated 30-11-1999; findings of the enquiry officer dated 13-4-2000 and proceedings of enquiry as Ex.M1 to M6 respectively and after examining first party as WW1 hearing the arguments addressed by the learned advocates appearing for both sides by his order dated 6-9-2005 answered the Preliminary Issue in the negative holding the DE conducted against the first party by the second party being not fair and proper. Thereafter the second party in order to substantiate the charges levelled against the first party while examining the then regular Branch Manager of Krishna Grameena Bank, Shri B.M. Ravi Raj as MW2 through him got marked letter of authorization in his favour; charge sheet issued to the first party; reply of the first party to the charge sheet dated 20-4-1999; investigation report dated 29-7-1999 submitted by Branch Manager, Dornahalli Branch i.e. MW2 Shri B.M. Ravi Raj; letter of the first party dated 28-7-1999 admitting the charges; letter issued by Dornahalli Branch Manager dated 4-9-1999 addressed to the head office regarding payment of Rs.15000 by the first party; undertaking letter dated 4-9-1999 given by the first party seeking extension of time for balance amount to be paid; the letter of Dornahalli Branch Manager to head office dated 10-9-1999 intimating balance amount being paid by the first party; two letters of the first party both dated 10-9-1999 confirming the payment of Rs. 3000 and Rs. 7000 by him; leave application of the Clerk-cum-Cashier dated 6-04-1999 for the period 3-5-1999 to 8-5-1999; leave application of MW2 Shri B.M. Ravi Raj dated 30-4-1999 for 3-5-1999 and copy of intimation to CS regarding dismissal of appeal as Ex. M7 to M18 respectively. Interalia the first party while filing his affidavit examining himself on oath as WW1 subjected himself for cross-examination and his advocate during the course of cross examination of MW2 got marked the copies of explanation offered by Shri M.K. Badasheshi dated 26-8-1999, 10-7-1999 and the report submitted by MW2 to

the Head Office dated 17-07-1999 as Ex.W1 to W3 respectively.

8. With the above pleadings touching the merits oral and documentary evidence brought on record by both the sides, I have heard the arguments addressed by the learned advocates appearing for both the sides.

9. The learned advocate appearing for the second party taking me through the evidence of MW2 urged that he who was the Manager of Dornahalli Branch and was admittedly on leave on 3-05-1999 having deposed to the admission made by the first party, not even a suggestion being made to him that he obtained the same forcibly from him, only because the incharge manager had taken moral responsibility on him being negligent in his duties that cannot take away effect of the clear cut admission made by the first party who has also credited the amount in question in two installments and the same being embezzlement of customers money being serious in nature which takes away the public confidence in the bank, punishment imposed is reasonable and proportionate. Thus he supported the charges levelled against the first party and also the punishment imposed against him. Interalia it was urged, admittedly immediately on receipt of the complaint by the customer Shri Abdulska Kashimsa Math dated 3-7-1999 Shri M.K. Badasheshi who was admittedly incharge Branch Manager on 3-5-1999 having unequivocally admitted by him in writing on 10-7-1999 the copy of which is at Ex.W2 wherein he has clearly stated at the time of closing day's transaction shortage of cash at the counter was being noticed in order to make good the cash he debited SB A/c No. 1228 making necessary entries without voucher with an intention to deposit at a later date which was not possible for him till that day, subsequently in order to save himself taking his weakness who was in the lowest rung of the bank an improved statement has been taken from Shri M. K. Badasheshi copy of which is at Ex.W1 dated 26-8-1999 to the effect that he/first party had submitted the voucher and that he has paid him the money etc. and as far as charge of Rs. 5000 in the second explanation of Shri M. K. Badasheshi dated 26-8-1999 he himself has taken responsibility of that amount also on himself, therefore, none of the charges are proved he be exonerated from all the charges with direction to reinstate him with full back wages and all consequential benefits.

10. In view of the facts narrated by me above, the point that arises for my consideration are—

- (1) Whether second party proved that the first party was unauthorisedly holding the keys overnight of branch premises and cupboard/trunks containing bank records/ vouchers from 30-4-2009 to 3-5-1999 and on 3-5-1999 presented a forged voucher for Rs. 25,000 relating to SB Account No. 1228 of

Shri Abdulsa Kashimsa Math and received the cash and thereafter removed the voucher from the bundle before depositing in the trunk?

(2) Whether the second party proved that on 4-3-1997 he presented a forged voucher of Rs. 5000 on SB Account No. 1843 and received the proceeds?

(3) What Order?

11. On appreciation of the pleadings of both sides touching the merits, oral and documentary evidence brought on record, in the light of the arguments addressed by the learned advocates appearing for both sides my finding on point Nos. 1 & 2 are in the negative and point No. 3 is as per the final order for the following reasons:

Reasons

According to MW2 Shri B.M. Ravi Raj who is the sole witness examined for the management on merits of the case he who worked at Second Party's Dornahalli Branch as Manager from 16-6-1997 to 30-9-1999 availed leave on 3-5-1999 and as Shri B. Shamappa, Clerk-cum Cashier had also availed leave on that day i.e. on 3-5-1999 Shri M.K. Badaseshi, the then RDO was the incharge manager as such only Shri M.K. Badaseshi and the first party who was the messenger were in the branch and on 03-07-1999 Shri Abdulsa holder of SB Account No. 1228 came to the branch and noticed a sum of Rs. 25,000 being drawn from his account on 3-5-1999 without he issuing any withdrawal voucher or cheque and lodged a written complaint and on verification since the voucher in that regard was missing, immediately he enquired Shri M.K. Badaseshi who was Incharge Branch Manager on 3-5-1999 and he explained the circumstances prevailed on that day taken moral responsibility but denied any fraud being committed by him and then he conducted preliminary enquiry and submitted his report to the Head Office dated 17-7-1999 as per Ex. W3 and subsequently on 23-7-1999 the first party was placed under suspension and issued with charge sheet, he admitted the charges through his letter dated 24-8-1999 and thereby the charges against the first party being admitted by himself are proved. This witness very intelligently interprets the letter of admission given by Shri M.K. Badaseshi immediately on receipt of the complaint as he accepted the moral responsibility denying any fraud being committed by him. Since he has categorically admitted in his cross examination that Ex. W2 is xerox copy of letter written by Shri M.K. Badaseshi in his own handwriting addressed to him, the plain reading of Ex. W2 which is incorporated in the Claim Statement and put as it is in the above portion of the award. It is very clear that under this letter Shri M. K. Badaseshi did not just taken the moral responsibility on him denying any fraud being committed by him but on the other hand he has specifically stated that at the time of closing day's transaction shortage of cash at the counter being noticed in order to make good

the cash he debited in SB account No. 1228 making necessary entries without voucher with an intention to deposit it later date which was not possible till that day, categorically admitted that without any voucher he withdrew the amount in question from SB Account No. 1228. Shri M. K. Badaseshi was being in a responsible job of the bank and was incharge manager on 3-5-1999 having categorically admitted withdrawal of the amount in question from SB Account No. 1228 without any voucher as contended by the first party the bank officials to save him subsequently persuaded the first party to give in writing that he is responsible for the said amount appears to be more probable. In the background of the specific defence put forward by the first party, Ex. W2 the immediate response on receipt of complaint from the customer probalises the case put forward by the first party. In Ex. W1 the subsequent statement/letter given by Shri M. K. Badaseshi dated 26-8-1999 he tried to fix the responsibility of withdrawal of Rs. 25,000 on 3-5-1999 from SB Account 1228 to the first party he made an attempt to explain his admission under Ex. W1 as due to non availability of voucher he having stated so in that letter which cannot be accepted. His version in the same letter dated 26-8-1999 due to non availability of voucher as he could not convince the depositor he paid cash of Rs. 5000 to the depositor obtaining the withdrawal slip dated 4-3-1997 and thereby taken the responsibility of charge covered under point No. 2 as well is unacceptable. Moreover management having not examined him during the trial to testify such explanation offered through his subsequent letter dated 26-8-1999 copy of which at Ex. W1 such a version cannot be accepted. Under the circumstances the case put forward by the first party that for the fraud committed by the Shri M. K. Badaseshi he has been made scape goat to save him being probable I arrived at the conclusion of answering point No. 1 and 2 in the negative.

12. In view of my finding on point number 1 & 2 in the negative, the first party being made scape goat to save Shri M. K. Badaseshi, RDO who was Incharge Branch Manager on 3-5-1999

13. for which the first party has also to little extent assisted to him (Shri M. K. Badaseshi) and suffered the impugned order of dismissal, of course reinstatement and continuity of service has to follow but as far as his claim put forward only during the course of argument for full back wages cannot be entertained. The first party has neither pleaded in the claim statement that he is unemployed after the impugned dismissal nor led any evidence that he remained unemployed after the impugned dismissal order. Since as opined by me above, the first party also having contributed to some extent to suffer the dismissal order admitting the charges claiming being persuaded that Shri M.K. Badaseshi would reimburse the amount involved in the alleged fraud if he admit and there will be no police complaint also and he will be viewed leniently, he gave letter/reply confessing charges. In

addition to this having regard to the nature of the employment of the first party that he was an ordinary messenger, it can be said that he must have been working elsewhere in all these days to earn his livelihood at least on daily wages if not, regularly at least intermittently, I feel it just and proper to award 40% of the back wages from the date of his dismissal till reinstatement.

AWARD

The reference is allowed holding that the impugned action of the management of Krishna Gramena Bank in imposing the punishment of removal (wrongly mentioned as dismissal in the schedule to the reference) on first party w.e.f. 5-7-2000 (wrongly mentioned w.e.f. 4-7-2001 in the schedule to the reference) as not justified and first party is entitled for reinstatement with continuity of service and 40% back wages from the date of his removal till reinstatement and other consequential benefits that he would have entitled in the absence of the impugned removal order.

(Dictated to PA transcribed by her corrected and signed by me on 14-9-2011)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2011

का.आ. 3238.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 52/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-10-2011 को प्राप्त हुआ था।

[सं. एल-12012/309/97-आईआर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th October, 2011

S.O. 3238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2000) of the Central Government Industrial-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, received by the Central Government on 14-10-2011.

[No. L-12012/309/97-IR(B-1)]

RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/52/2000

Date: 26-9-2011

Party No. 1(a) : The Asstt. General Manager,
State Bank of India, Zone-I Kingsway,
Nagpur- 440 012

Versus

Party No. 2 : Shri R.M. Ghodichor,
Ambedkar Nagar, At & PO: Tumsar,
Behind Sindhi Camp,
Distt. Bhandara, (M.S.) 441 904

AWARD

(Dated: 26th September, 2011)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of State Bank of India and their workman Shri R.M. Ghodichor, to the Central Government Industrial Tribunal-cum-Labour Court, Mumbai-I for adjudication, as per letter No. L-12012/309/97-IR (B-1) dated 10-08-1998, with the following schedule:—

"Whether the action of the management of State Bank of India in terminating the services of Shri R.M. Ghodichor is legal and justified? If not, to what relief the workman is entitled?"

Subsequently the case is transferred to this Tribunal for disposal in accordance with law.

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri R.M. Ghodichor ("the workman" in short) filed the statement of claim and the management of State Bank of India ("Party No. 1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he was in the service of Party No. 1 from 19-10-1984 to 02-02-1985 as a messenger, on daily wages basis at various branches and worked at various branches of State Bank of India in Bhandara district and he was taken on job again in May 1991 and continued till September 1996 and he completed 240 days of work not only in total, but also, in the year 1994-1995 i.e. from 28-02-1994 to 27-02-1995. The further case of the workman is that the Party No. 1 was giving artificial break intermittently during the period from 1991 to 1996, even though, there were permanent vacancy of the posts of messenger and peon etc and also appointed Shri Gulab Kunjekar and Shri Kishore Fulsunge in his place, even though they were juniors to him and his service record was good and excellent and he requested the Party No. 1 to regularize his services, but instead of regularizing his services, the Party No. 1, without following the mandatory provisions of sections 25-F and 25-G of the Act, orally terminated his services on 30-09-1996, without giving one month's notice or one month's wages in lieu of notice to him and as such, he is entitled for reinstatement in service in his original post, on regular basis with full back wages and continuity.

It is also pleaded by the workman that he approached the Assistant Labour Commissioner (Central-I), Nagpur for amicable settlement and the Party No. 1 though in its written reply admitted that he was in service with it, did not agree to reinstate him in permanent post of subordinate cadre and for that the conciliation proceedings failed and the Party No. 1 made a settlement on 19-06-1996 with nine other co-workers, who had worked similarly and took them in service, on regular temporary basis and the oral termination of his services is illegal and he is entitled to be reinstated in his original post on regular basis with full back wages and continuity in service.

3. The Party No. 1 has pleaded in the written statement inter-alia that the workman worked in purely temporary capacity intermittently without continuity in service, due to administrative exigency, as temporary messenger, messenger-cum-watchman and badli watchman etc. at Tumsar, Bhandara and Sakoli Agricultural Development Branch and the workman had never completed 240 days of work in any calendar year as prescribed under the law and some time he had worked for the full day and some time for part of the day and the working of the workman in different branches in different category cannot be clubbed together and each branch of the Bank has a separate entity and the workman had been considered by the Bank for permanent service in view of the settlements arrived at by the State Bank of India and the All India State Bank of India Employees Association, for deciding the issue of temporary casual and daily wages dated 17-11-1987, 16-07-1988, 27-10-1988, 09-01-1991 and 13-07-1996 and according the terms of settlements, it was agreed that temporary employees and casual labourers would be given one time opportunity to be absorbed, under certain norms and for that purpose panels would be prepared for filling up vacancies as per the norms agreed to, under those settlements and it was also agreed that the panels for absorption would be kept alive up to 31st March, 1997 and thereafter, the lists would be lapsed and in response to the said settlement, the bank gave an advertisement in the news papers calling upon all the eligible temporary employees to apply for the permanent appointment in the subordinate cadre and the workman in response to the said advertisement, applied to the bank and was duly considered and interviewed by the interview committee and empanelled and the panel prepared in pursuance to the said settlement, stood lapsed on 31-03-2007. It is further pleaded by Party No.1 that there is no question of giving artificial breaks to the workman and whenever, the services of the workman were required due to administrative exigencies, he was asked to do the work and Gulab Junjéwar and Kishor Fulsunge were not appointed in place of the workman and as the services of the workman were no more required, he was not provided with the work w.e.f. 30-09-1996 and there was no question of following the provisions of sections 25-F and 25-G of the Act as the workman did not complete 240 days of

continuous work in any branch, preceding 12 months of the date, when he lost his work.

It is further pleaded by Party No. 1 that the workman was appointed on daily wages, casual and temporary basis by the branches, who had/have no authority to appoint any person in such category and as the appointment was illegal, irregular and impermissible under the rules of the bank, such illegality cannot be perpetuated for indefinite period and as the initial engagement of the workman was purely being on casual, daily and temporary basis and the purpose for which the workman was engaged being completed, termination of his services, was inevitable and as such, the workman is not entitled for any relief.

4. The workman in his rejoinder has pleaded that in view of the settlement arrived at between the bank and Federation of all India State Bank dated 17-11-1987, his case was considered by the Party No. 1 and he was interviewed and was found suitable for absorption in regular service of the Bank and as such, his name was enlisted at serial no. 13 in the list of Schedule Caste candidates and though he made representations to the bank from time to time, for regular appointment as per the said settlement, the party no. 1 did not pay any heed towards the same and the party no. 1 committed breach of settlement and violated the mandatory provisions of law, while terminating his services.

5. Both the parties led oral evidence in support of their respective claims. The workman examined himself as a witness and reiterated the facts mentioned in the statement of claim in his examination-in-chief, which was on affidavit. In his cross-examination, the workman has admitted that from 1991 to 1996, he worked at Tumsar, Bhandara proper, Sakoli and Sakoli Agriculture Development branch of SBI and he worked as temporary messenger regularly and in the certificate dated 06-09-1993, the branch manager has written that he worked as messenger, waterman, Farash, and sweeper and the said certificate was issued rightly by the Branch Manager and though he was working daily, he has not filed any document in support of the same and on 29-09-1996, he worked at Tumsar and on 14-03-1995, there was a phone call from the Head Office to stop the engagement of the temporary employee. The workman denied the suggestion that he did not work for 240 days preceding 29-09-1996 and he was engaged by the branch manager to work in the branches of the SBI at Tumsar, Bhandara, Sakoli and Sakoli ADB and he was not engaged by the Asstt. General Manager. The workman has also stated that he cannot say if the waiting list was lapsed on 31-03-1997 or not.

6. Shri V. S. Kumar, the Manager (P & HRD) and Shri Jayant Anant Deshpande, the Manager (Sales planning), Zonal office of SBI, Nagpur were examined as witnesses by the party no. 1. The evidence of the said witnesses is in the same line of the stands taken by party no. 1 in the written statement.

7. It is necessary to mention here that on 12-4-2001, award was passed by the Tribunal holding that the action of the management of State Bank of India in terminating the services of Radheshyam M. Ghodichor is legal and justified and he is not entitled to any relief. The workman challenged the said award before the Hon'ble Bombay High Court, Nagpur Bench, Nagpur in Writ Petition no. 3943 of 2001. The Hon'ble High Court by order dated 29-10-2002 disposed of the said writ and remanded the reference for rehearing after setting aside and quashing the award dated 12-4-2001. The Hon'ble High Court was pleased to pass the following orders:

"The petitioner having collected material document which do support his case, deserves a fair hearing and that is why in the facts and circumstances of the case, the impugned order is quashed and set aside. The matter is remanded back to CGIT for hearing.

It is made clear that the CGIT should decide the matter on its own merits, without being influenced by the observations made by this court. The matter be expeditiously disposed of. Parties are directed to appear before the CGIT on 20-11-2002. Certified copy expedited."

8. After remand of the reference, the workman again examined himself as a witness. He also produced documents, Exhibit W-1 to W-11. The evidence of the workman on affidavit is regarding his producing documents in support of his claim of working more than 240 days with the bank and his entitlement for reinstatement in service. In the cross-examination, suggestions given to the workman that he prepared the daily wages attendance register and no such register is maintained in any bank for temporary employees were denied by him.

The party no. 1 did not adduce any evidence after remand of the case but relied on the evidence already adduced earlier.

9. In the argument, it was submitted by the learned advocate for the workman that the services of the workman was terminated w.e.f. 30-09-1996 and due to denial of the claim of the workman by party no. 1 and the inability of the workman to produce the relevant documents in support of his claim, the reference was answered against the workman and after procuring the necessary documents, the workman approached the Tribunal for review of the award, but his application was rejected on 26-06-2001, so he approached the Hon'ble Court and the Hon'ble High Court remanded back the matter for fresh consideration along with the documents filed by the workman and a similar matter was decided by this Tribunal in reference no. 171/2000 in favour of the workman, Naresh Rangari on 12-09-2001 and as the documents filed by the workman clearly establish that the workman worked for more than 240 days, and the workman worked for more than 15 years with the party no. 1, the workman is entitled for reinstatement in service.

10. Per contra, it was submitted by the learned advocate for the party no. 1 that it is clear from the documents filed by the Bank on 23-4-1999 that the workman did not complete 240 days of work preceding the twelve calendar months of the date of alleged termination, in any branch of the SBI and as such, he is not entitled for reinstatement in service and so far the working of the workman from 28-2-1994 to 27-2-1995 is concerned, the workman worked for 90 days at Tumsar branch and 159 days at Bhandara branch and the working of the workman in different branches in different categories cannot be clubbed together and each branch of the SBI has a separate entity for the present purpose. In support of such contentions, the learned advocate for the party no. 1 placed reliance on the decisions reported in AIR 1966 SC 75 (Employees, Digawadih Colliery Vs. Their workmen), 1970 II LLJ-306 (Ramkrishna Ramnath Vs. Labour Court), 1984 LAB I.C.- 1264 (Suraj Prasad Vs. State of Bihar), AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar), AIR 2002 SC-1147 (Range Forest Officer Vs. S.T. Hadimani), AIR 1981 SC-1253 (Mehanal Vs. M/s. Bharat Electronics Ltd.) and AIR 1997 SC-3091 (Syndicate Bank Vs. Shankar Paul).

It was further submitted by the learned advocate for the party no. 1 that the appointment of the workman was purely on temporary and casual basis, intermittently and such appointment was not on a proper selection or under the relevant rules and procedures and his very appointment was illegal and as such, the claim of the workman for reinstatement is not tenable. In support of such contention, reliance was placed on the decision reported in AIR 2006 SC 1806 (Secretary, State of Karnataka Vs. Umadevi).

It was also submitted that the case of Naresh Rangari in CGIT Case no. 171/2000 is quite different from the case of the present workman and such fact has been admitted by the workman in his evidence and on that basis also, the workman is not entitled to get any relief.

The learned advocate for the party no. 1 also submitted that as the waiting list prepared by the bank for absorption of the casual worker by the bank as per the settlement and in which the name of the workman was enlisted, lapsed on 31-03-1997, the workman cannot claim reinstatement in service on the basis of the same.

11. It is the admitted case of the parties that in terms of the settlements entered into between the bank and the All India State Bank of India Employees Association, the bank prepared a waiting list of the temporary and casual labourers for their absorption in the bank service and after necessary interview, the name of the workman was included in such a list. It is found from the documents (the copies of the settlements) that, such waiting list was to be lapsed on 31-03-2007. The waiting list having the name of the workman was also lapsed on 31-03-2007. It is also found that the appointment of the workman was not made in accordance with such waiting list.

The Hon'ble Apex Court in the decision reported in AIR 1997 SC-3091 (Supra) have held that, "panel valid only for one year—Whatever conditional rights empanelled candidates have they come to an end on expiry of one year—Temporary employees cannot claim permanent absorption in service."

Applying the principles enunciated by the Hon'ble Apex Court to the present case in hand, it is found that as the waiting list lapsed on 31-03-1997; the workman is not entitled to claim appointment or reinstatement in service on the basis of such list.

12. However, the main claim of the workman is that he was working with the party no. 1 from May 1991 to September 1996 and he had completed 240 days of work in total as well as in a year, 1994-95, i.e. 28-2-1994 to 27-2-1995 and he was entitled for regularization in service, but he was orally terminated from services on 30-9-1996 without compliance of the provisions of sections 25-F and 25-G of the Act.

The party no. 1 has denied the claim of the workman and has taken the plea that the workman did not complete 240 days of work in the preceding 12 months of 30-09-1996 and as such, there was no question of compliance of the provisions of sections 25-F and 25-G of the Act. Party No. 1 has also taken the plea that the workman did not complete 240 days of work in any calendar year in any particular branch and he worked for different periods in different branches in different capacity, temporarily and such periods cannot be clubbed together to hold that the workman worked for 240 days in any calendar year.

Before entering into the arena of merit of the case, I think it opposite to mention here about the principles enunciated by the Hon'ble Apex Court regarding the application of provisions of section 25-B and 25-F of the Act. The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Supra) have held that :—

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25-B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary if the total service is 240 days in a period of twelve calendar months either before the several changes or after these.

The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. This last amendment has now removed a vagueness which existed in the unamended section 25-B".

13. In the decision reported in AIR 1981 SC-1253 (Supra), the Hon'ble Apex Court have held that :

"Industrial Disputes Act (14 of 1947), Section 25-B (1) and (2)—Continuous service—Scope of sub-sections (1) and (2) is different, (words and phrases—Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

14. The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (Supra) has held that :

"Industrial Disputes Act (14 of 1947-S. 25F, 10-Retrenchment Compensation-Termination of services without payment of Dispute referred to Tribunal—Case of workman/claimant that he had worked for 240 days in a year preceding his termination—Claim denied by management—Onus lies upon claimant to show that he had in fact worked for 240 days in a year —In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman. So, keeping in view the settled principles enunciated by the Hon'ble Apex Court, now, the present case at hand is to be considered.

16. In support of his claim, the workman has produced the following documents besides examining himself as a witness to prove that he worked for 240 days in a calendar year.

- (i) Xerox copy of daily wages attendance register.
- (ii) Xerox copies of cheque showing payment of wages in

(iii) Xerox copy of the certificate granted by the branch Manager, Bhandara to the effect that the workman worked as Bhandara Branch of SBI for 159 days as temporary messenger from 28th February, 1994 to 10th August, 1994.

(iv) Xerox copy of the certificate granted by the Branch Manager, Tumsar branch of SBI to the effect that the workman worked for 64 days from August 1994 to December 1994 and 41 days from 1-1-1995 to 14-3-1995 as a temporary messenger.

(v) Xerox copy of the certificate granted by the branch manager, A.D.B., Sakoli that the workman worked as messenger/waterman/farrash and sweeper in A.D.B. Branch from May 1991 to August 1993 and worked for 106, 199 and 106 days in 1991, 1992 and 1993 respectively.

(vi) Xerox copy of letter dated 02-12-1995 given by branch manager, Tumsar Branch of SBI to the Asstt. General Manager, zonal office, Region I, Nagpur mentioning therein that the workman had completed 249 days of work from 28-2-1994 to 27-2-1995.

Out of the said documents, document no. (iii) to (vi) were exhibited and marked as Exhibits W-1 to W-3 and W-6. Even though, documents as mentioned at serial nos. 1 and 2 were not exhibited, in the interest of justice, I think it proper to take the same also into consideration. However, on perusal of the documents, it is found that as per the attendance register, the workman was working till 26-2-1994. Likewise, the cheques showing payment of wages to the workman as mentioned in serial (ii) are also of the year 1994. Exhibits W-1, W-2 and W-3 show that the workman worked as temporary messenger and in other posts from May 1991 to 14-3-1995 intermittently. Exhibit W-4 shows that the workman worked for 249 days from 28-2-1994 to 27-2-1995 at Tumsar Branch. None of the documents filed by the workman shows the workman working beyond 14-3-1995.

However, the document, Exhibit M-1, filed by the management shows that the workman worked for 115 days part time from 30-9-1995 to 29-9-1996 in Tumsar Branch.

It appears from the evidence on record that the workman was engaged temporarily from May 1991 to September 1996 and on 30-9-1996, his services were terminated. The relevant date is the date of termination of service i.e. 30-9-1996. So, it is for the workman to prove that he rendered service for 240 days commencing from 30-9-1996 and counting backwards within a period of 12 calendar months. However, the workman has failed to prove the same by adducing necessary evidence. As the workman has failed to satisfy the eligibility qualifications prescribed in section 25-F read along with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and he is not entitled to any relief.

The other documents filed by the workman are also of no help to him to prove his claim. Hence, it is ordered:—

ORDER

The action of the management of State Bank of India in terminating the services of Shri R.M. Ghodichor is legal and justified. The workman is not entitled for any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2011

का.आ. 3239.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 48/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-10-2011 को प्राप्त हुआ था।

[सं. एल-22012/324/1997-आईआर (सी-II)]

डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 14th October, 2011

S.O. 3239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MCL, and their workman, which was received by the Central Government on 14-10-2011.

[No. L-22012/324/1997-IR(C-II)]

D. S. S. SRINIVASA RAO, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present : Shri J.Srivastava, Presiding Officer, C.G.I.T.-
cum-Labour Court, Bhubaneswar.

Tr. Industrial Dispute Case No. 48/2001

Date of Passing Award - 28th September, 2011

Between :

The Management of the General Manager,
Ib Valley Area, MCL, PO. Brajrajnagar, Distt.
Jharsuguda

.... 1st Party-Management

AND

Their workman represented through the General
Secretary, Brajrajnagar Coal Mines Union, PO.
Lamtibahal, Via, Brajrajnagar, Distt. Jharsuguda

....2nd Party-Union

APPEARANCES:

Shri B.A. Rao Pattnaik,	... For the 1st Party-
Authorized Representative	... Management
None	... For the 2nd Party- Union

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the Management of MCL, Ib Valley Area and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 vide letter No. L-22012/324/97-IR(CM-II), dated 19-8-1998 to the following effect:

"Whether the demand of Brajrajnagar Coal Mines Workers Union, At./PO. Lamtibahal, Via Brajrajnagar, Dist. Jharsuguda to regularize all 15 workmen (list enclosed) who have been working at bunker at Lajkura Opencast Mines and to pay NCWA wages by the management at Ib Valley Area, Mahanadi Coal Fields Limited, PO. Brajarajnagar, Dist. Jharsuguda is justified and proper? If not, to what relief the workmen are entitled?"

2. The 2nd Party-Union espousing the cause of the workmen has stated in its statement of claim that the workmen, whose list has been enclosed with the letter of reference, are being engaged in the bunker as non-departmental workers for more than decade uninterruptedly under the 1st Party-Management. The nature of work performed by the said workmen is regular and perennial in as much as without the operation of the bunker, the whole mine shall come to a stand-still position. The workmen have been demanding to regularize their services either personally or through the Union, but despite several assurances given by the 1st Party-Management no effective steps were taken. As a result the dispute was raised. The 1st Party-Management while entering into an agreement with this Union in respect of the workers working in the Belpahar Open Cast Mine has regularized 19 workmen then working as contractor's labour as General Mazdoor in Category-I. The pay scale of the said category of workmen has also been provided for in that agreement. The workers involved in the present dispute have never been paid the wages prescribed for General Mazdoor, Category-I, but have been paid much less. The 1st Party-Management is under statutory obligation to see that the workers engaged through contractor are paid full wages at the rate which has been fixed by agreement, settlement or award. Therefore the workmen involved in the present dispute are also entitled to the difference of wages from respective dates of their engagement besides regularization of their services.

3. The 1st Party-Management has filed reply through written statement and has stated that the 1st Party-

Management engages different contractors as and when necessary depending upon the nature of work. None of the contractors is engaged permanently. The contractors use to deploy labourers on temporary basis as per their suitability and requirements from time to time. The workmen as per the list submitted by the 2nd Party-Union are the workmen engaged by the contractors in the above process and cannot be termed as "workmen" of the 1st Party-Management. There is no privity of contract between the 1st Party-Management and such workmen and therefore no employer and employee relationship exists between them and no question arises for their regularization. The matter relating to Belpahar Open Cast Mine stands on different footing. Hence such plea is devoid of merit and not sustainable. Engagement of contractors for different jobs which are not permanent and perennial in nature does not amount to violation of the clauses of N.C.W.A. and cannot be taken as unfair labour practice and hence no question of payment of differential wages to the contract workers arises.

4. In the rejoinder filed by the 2nd Party-Union it has further been alleged that the workmen involved in the dispute are trained workers and they perform their duties as per the instruction and direct supervision of the Engineer in-charge/Officer in-charge of the bunker. Hence employer and employee relationship stands proved.

5. On the pleadings of the parties following issues were framed:

ISSUES

1. Whether the demand of Brajrajnagar Coal Mines Workers Union to regularize all 15 workmen, who have been working at bunker at Lajkura Opencast Mines and to pay NCWA wages by the management at Ib Valley Area, is justified and proper?

2. If not, to what relief the workmen are entitled?

3. Whether the reference is maintainable?

6. The 2nd Party-Union has examined Shri Kishori Lal Kalo as W.W.-I, while the 1st Party-Management has examined Shri Pradip Kumar Guin as M.W.-I. No document on either side has been proved or exhibited.

FINDINGS**ISSUE NO. I**

7. From the pleadings of the parties it is clearly made out that the workmen involved in the dispute, whose list has been enclosed with the letter of reference, are contract workers, though this fact seems to have been suppressed by the 2nd Party-Union before the Government as no mention of it has been made in the dispute referred to this Tribunal/Court and also in the array of the parties. A reflection of this fact comes out in Paras 2 and 6 of the Statement of Claim passively. There is also no allegation

that the workmen involved in the dispute were engaged by the 1st Party-Management directly without the agency of the contractors. In the evidence of W.W.-I Kishori Lal Kalo it has come that "15 contract labourers work in this bunker in three shifts". He has also admitted that he has been working in Lajkura Mines bunker under the contractor since 1986 and he has worked under number of contractors. Presently he is working under the contractor, IBT Co. owned by Shri Kishorelal Agarwal. This fact goes to prove that the workmen involved in the dispute are contract workers and they were not employed directly by the 1st Party-Management. Therefore no relationship of "employer and employee" exists between them. If a Mines Officer of the 1st Party-Management is any-how supervising their work it does not mean that the workers are employed by the 1st Party-Management. This witness does not tell for how many years the workers involved in the dispute are working at bunker at Lajkura Opencast Mines and what are their names. Then how can it be definitely said that this dispute involves all those workers named in the list provided by the 2nd Party-Union and they are entitled for regularization. This witness does not thus plead or make out a case for other workers. The contractor under whom the workers involved in the dispute are working has also not been made party to the dispute. Therefore true facts regarding their employment could not come before this Tribunal/Court.

8. The evidence produced from the side of the 2nd Party-Union does not disclose the period since when the workmen involved in the dispute were or have been working as contract labourers with the 1st Party-Management. Hence their claim for regularization cannot be put to test for its justification or entitlement, even assuming that the workers involved in the dispute were or have been working with the 1st Party-Management under its direct control. The 2nd Party-Union has also failed to make it a point that the workmen involved in the dispute are also governed by the agreement made by the 2nd Party-Union with the 1st Party-Management in respect of 19 workers working in Belpahar Open Cast Mines. Any agreement entered into by the parties only binds those parties who are part of the agreement. This agreement has been filed by the 2nd Party-Union in the shape of xerox copy, but it does not recite that this agreement will also apply to the workers working in the bunkers of other coal mines. Hence the workmen involved in the dispute are neither entitled for regularization nor payment of differential wages as claimed by them and their demand is not justified and proper. This issue is decided against the 2nd Party- Union.

ISSUE NO. 3

9. As has been discussed in Issue No.1 the employer and employee relationship between the 1st Party-Management and the workmen involved in the dispute is not established. The said workmen are contract labourers

but the contractor has not been made as a party to the dispute. Therefore the reference is vague and unsustainable and the plea raised by the 1st Party-Management that the reference is not maintainable is held in its favour. This issue is decided accordingly.

ISSUE NO. 2

10. For the reasons and findings recorded in Issue No.1 and 3 the workmen involved in the case are not entitled to any relief claimed for.

11. Reference is answered Accordingly.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2011

का.आ. 3240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम.एस.के. मिल्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलोर के पंचाट (संदर्भ संख्या 52/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-10-2011 को प्राप्त हुआ था।

[सं. एल-42012/116/2005-आई आर (सीएम-II)]

डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 14th October, 2011

S.O. 3240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the management of MSK Mills, and their workmen, received by the Central Government on 14-10-2011.

[No. L-42012/116/2005-IR(CM-II)]

D. S. S. SRINIVASA RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM-LABOUR COURT, YESHWANTHPUR

Dated: 29th September, 2011

Present: Shri S.N. Navalgund, Presiding Officer

C.R. No. 52/2008

I PARTY

Shri Chandrakanth Gaekwad,
S/o Bheemashankar Gaekwad,
Q.No. B/66, MSK Mills Area,
Gulbarga,
Karnataka State

II PARTY

The General Manager,
M.S.K. Mills,
Near Bus Stand,
Gulbarga,
Karnataka State

AWARD

1. The Central Government on being directed by the Hon'ble High Court of Karnataka in Writ. Petition No. 4354/

2008(L-RES) by order dated 16-04-2008 (copy of which is at Ex. W8) made this reference under No. L- 42012/116/2005-IR(CM-II) dated 5-06-2008 for adjudication on the following Schedule:

SCHEDULE

“Whether the terminal benefits in terms of voluntary retirement of Shri Chandrakanth Gaekwad has been satisfied in accordance with the provisions of law and the scheme applicable to him? To what relief is the workman concerned entitled?”

2. The brief facts leading to this reference and award are that :

Shri Chandrakanth Gaekwad(hereinafter referred as first party) who joined as a Clerk at MSK Mills, Gulbarga (hereinafter referred as the second party for the sake of convenience) in the year 1969 he tendered his resignation on 22-03-1991 on personal reasons with a request to accept with immediate effect along with a letter of request that dues payable by him due to non submission of accounts may be adjusted from gratuity and other benefits payable to him and he may be permitted to continue the occupation of the quarter for 3 months from the date of acceptance of his resignation and the rent and electrical charges may be recovered from the benefits payable to him(copies of which are at Ex. M1). Thereafter he sent a telegram on 30-03-1991 at about 4.50 pm to the second party withdrawing the resignation which is said to have been received on 1-04-1991 and a leave letter on 1-4-1991 through RPAD requesting to sanction 20 days leave on which he has been intimated through letter dated 15-4-1991(which is at Ex. W4) that his resignation dated 22-3-1991 being accepted as requested by him with immediate effect and he has been relieved of his duty from 30-3-1991, and one Mr. M.N. Reddy has also joined in his place his requests could not be considered. Thereafter he raised the industrial dispute contending that the said resignation is not voluntary and the said dispute tried before the Presiding Officer, Labour Court, Gulbarga registered in Reference No.435/1998 by award dated 17-4-2000 came to be allowed accepting his contention the resignation being not voluntary further directing the second party to reinstate him within six weeks from the date of publication of award and to pay 75% of the back wages from 30-3-1991 till actual date of reinstatement (copy of which is at Ex. W5). The said award of the Labour Court, Gulbarga being challenged by the second party in Writ Petition No. 37534/2000 came to be set aside by order dated 3-4-2001 setting aside the award passed by the Labour Court, Gulbarga(copy of which is at Ex. M4). Aggrieved by the said order in WP No. 37534/2000 the first party preferred Writ Appeal No. 3233/2001 on the file of the Hon'ble High Court of Karnataka and same came to be dismissed by order dated 6-01-2003(copy of which is at Ex. M6). Then Special Leave petition was filed by the first

party against the said order of the Division Bench of Hon'ble High Court of Karnataka in the Apex Court of the country and that also came to be dismissed on 06-05-2003. Thereafter the second party issued notice to the first party dated 27-6-2003 (copy of which is at Ex. M3e) to the effect he is due towards licence fee and water charges to the tune of Rs.62,029 for the period over stayed by him up to 31-5-2001 and an amount of Rs.18,600 towards the amount misappropriated by him and to pay the said amount within 15 days and to vacate the quarters and to collect his gratuity due. Thereafter the first party claimed retirement benefits from the date of joining service till the date of retirement and then claiming that the same was not settled he filed a writ before the Hon'ble High Court of Karnataka in WP No. 21142/2004(L-RES) seeking a writ of certiorari to quash the notice dated 27-06-2001 and for a writ of mandamus to release the pension, retirement benefits, gratuity and other dues payable to him out of the service rendered by him from 1969 to 30-3-1991 and for other appropriate orders and that Writ Petition came to be rejected by order dated 23-8-2004 on the ground that the first party is having an alternative and efficacious remedy, further directing the office to return all the papers filed along with the writ petition to the writ petitioner enabling him to raise an Industrial Dispute (copy of which is at Ex. M5). Then the first party started conciliation proceedings and on its failure and the report of the conciliation officer, the Central Government by its communication dated 21-6-2006 intimated that he having resigned from service on 22-3-1991 and relieved w.e.f. 30-3-1991 and the modified voluntary retirement scheme 2002 came into effect on 13-02-2002 and the management has agreed for payment of terminal benefits as per the then existing scheme after reduction of recoveries due from the workman there subsists no industrial dispute. Aggrieved by that communication by the Central Government dated 21-06-2006 the first party approached the Hon'ble High Court of Karnataka in Writ Petition No. 4354/2008(L-RES) and in that writ petition on submission by the learned counsel for the first party that there is no dispute that the first party has tendered voluntary retirement but he is entitle for terminal benefits in terms of his claim petition and whether his claim is settled or not ought not have been decided by the Government without there being proper adjudication of the issue the matter ought to have been referred for adjudication to the Industrial Tribunal, the Hon'ble single judge hearing that matter by order dated 16-04-2008 allowed the writ petition partly directing the Central Government to refer the matter to the Industrial Tribunal to consider the only question “as to whether the terminal benefits in terms of voluntary retirement of the petitioner has been satisfied in accordance with the provisions of law and the scheme applicable to the case of the Petitioner”(copy of which is at Ex. W8). As a result of this order of the Hon'ble High court, the Central Government made this reference for adjudication.

3. On receipt of this reference and issuance of notices to both sides, both sides appeared through their respective advocates and filed their claim statement and counter statement respectively.

4. In the claim statement filed by the first party on 15-03-2010 while narrating the facts of his resignation and the previous litigations referred to by me above, surprisingly further claimed the labour court, Gulbarga in its award having ordered reinstatement into the service and at this juncture in view of the facts that he has already reached the age of superannuation reinstatement being not possible in view of the direction in that award for payment of 75% of back wages w.e.f. 30-03-1991 till the actual date of reinstatement second party may be directed to pay 75% of back wages from 30-3-1991 till the date of his superannuation giving the benefit of continuity of service for all purposes and an award may be passed to that effect. Inter alia in the counter statement filed for the second party on 16-9-2010 while narrating the facts of the first party tendering his resignation on 22-3-1991 and the previous litigations contended that the Hon'ble High Court of Karnataka in Writ Petition No. 37534/2000 by order dated 3-4-2001 having set aside the award of the Labour Court Gulbarga and the same came to be confirmed in the Writ Appeal filed by the first party in WA No. 3233/2001 and his special leave petition to Hon'ble Supreme Court also dismissed by order dated 6-05-2003, the acceptance of his voluntary retirement w.e.f. 30-3-1991 having reached the finality he cannot urge or claim the benefit arising out of the award passed by the Labour Court, Gulbarga in Reference No. 435/98 and as he voluntarily submitted resignation dated 22-03-1991 and the same came to be accepted w.e.f. 30-3-1991 he was not entitle for any benefit except gratuity amount of Rs. 29,320 but as he over stayed in the quarters provided to him he remained in arrears of licence fee and water charges to the tune of Rs. 80,629 as claimed in the notice dated 27-06-2001 the gratuity amount due to him was only to the tune of Rs. 29,320 after it is adjusted towards the amount payable by him he himself still remains due to the second party as such nothing is due to him as a retirement benefits.

5. When the matter came to be posted for evidence, on behalf of the second party while filing the affidavit of Shri N. Narayanappa, Assistant Manager (P) examining him on oath as MW1 photo copy of resignation letter of the first party dated 22-3-1991 along with a letter of request for adjustment of dues payable by him towards mills quarters licence fee and water charges and due to non submission of accounts from gratuity and other benefits payable to him, the relieving letter dated 22-03-1991 intimating that his resignation letter dated 22-03-1991 is accepted and he will be relieved from the close of working on 30-3-1991; seven letters written to the first party dated 16-1-1996, 15-4-1999, 4-9-1999, 11-6-2001, 27-6-2001, 5-7-2001 and 19-7-2001 calling upon him to pay his dues

and to receive gratuity payable to him; Orders passed in Writ Petition No. 37534/2000; Writ Petition No. 21142/2004 and Writ Appeal No. 3233 of 2001 as Ex. M1, M2, M3 series, M4, M5 and M6 respectively. After his cross examination and close of the second party side the first party while filing his affidavit in lieu of his evidence on 16-8-2010 while examining himself on oath as WW1 on 1-3-2011 got marked the Photostat copy of relieving order issued by the second party dated 15-4-2002 in respect of one Shri lakshman S/o Kallappa and the annexure regarding payment made to him towards his retirement benefits; statement of account for the amount disbursed by him on 9-3-1991 in respect of which there is an allegation that he misappropriated an amount of Rs. 18,600, original office order dated 21-3-1991 wherein he is shown to have been transferred from the post of Sr. Clerk to Sizing department; original letter received by him from the second party dated 15-4-1991 wherein it has been intimated that his leave application sent through RPAD on 1-4-1991 received in the mills on 5-4-1991 requesting to sanction 20 days leave does not arise at all in view of his resignation on 22-3-1991 relieving him from the service on 30-3-1991; certified copy of the award passed by the Presiding Officer, Labour Court, Gulbarga in Reference No. 435/98 dated 17-4-2000; Photostat copy of the letter received by him from second party dated 27-6-2001 wherein he has been called upon to pay arrears of quarters licence fee and water charges amounting to Rs. 62,029 covering the period up to 31-5-2001 and an amount of Rs. 18,600 misappropriated by him totaling to Rs. 80,629 and to collect his gratuity dues; a letter received by him from National Textile Corporation Ltd. dated 21-4-2005 intimating that his letter dated 6-04-2005 addressed to CMD, NTC (HC), New Delhi regarding sanction of MVRs being under consideration and Photostat copy of the order dated 16-04-2008 passed in WP No. 4354/2008(L-RES) by the Hon'ble High Court of Karnataka as Ex. W1 to W8 respectively and subjected himself for cross examination by the learned counsel for the second party.

6. With the above pleadings, oral and documentary evidence brought on record by both the sides when the learned advocates appearing for both sides were called upon to address their arguments the learned advocate appearing for the second party filed his written arguments wherein he has reiterated in brief the contention raised in the counter statement. Inter alia the learned advocate appearing for the first party addressed his oral arguments to the effect that since no valid relieving order is served on the first party on 22-3-1991 or 30-3-1991 he is deemed to have continued in service till he attained the age of superannuation and if he had continued in service he would have retired on superannuation in 2005, as such, for that period i.e. from 30-3-1991 till 2005 he is entitle for all service benefits.

7. The claim put forward by the first party that in terms of the award passed by the Labour Court, Gulbarga

in Reference No. 435/98 he is entitle for 75% of back wages till the age of superannuation in the year 2005, in the background of failure of his industrial dispute regarding resignation being obtained by threat and coercion by virtue of the order passed by the Hon'ble High Court of Karnataka in Writ Petition No. 37534/2000 wherein the award has been set aside which has been upheld in the writ appeal filed by the first party before the division bench of Hon'ble High Court of Karnataka in Writ Appeal No. 3233/2001 and also in the special leave petition filed by him to Hon'ble Supreme Court is quite absurd it is also not the scope of this reference. Moreover, in writ petition filed by him before the Hon'ble High Court of Karnataka in WP No. 4345/2008(L-RES) the order in which is the result of this reference a clear cut admission is being made by his advocate that there is no dispute he having tendered voluntary retirement and that his terminal benefits in terms of his claim petition are to be adjudicated the attempt made by the first party in reopening his claim/dispute regarding his resignation dated 22-3-1991 which has been given effect from 30-3-1991 is nothing but a frustrated attempt being not entitle for any other terminal benefits apart from the gratuity of Rs. 29,320, which has been duly adjusted against the arrears of his over stay in the quarters provided to him by the second party. The first party has not claimed in his claim statement pursuant to his voluntary retirement dated 22-3-1991 accepted and relieved by 30-3-1991 what all that he was entitled to and further in spite of the second party categorically contending that in view of his resignation dated 22-3-1991 and relieving him from service w.e.f. 30-3-1991 as per the then provisions he was only entitled to gratuity amounted to Rs. 29,320 even in his evidence nothing is whispered, what else other than that gratuity amount he would have been entitled to or that calculation regarding gratuity given by the second party i.e. Rs. 29,320 only has not been disputed. Thereby the claimant has not made out any case either through his claim statement or evidence adduced by him which terminal benefits he was entitled to other than the gratuity and has been refused by the second party. Since the first party tendered his resignation in general for personal reasons and not under any special scheme which is said to be introduced subsequent to his voluntary retirement no scheme is applicable to him. It is indicated from the reference made to the pleadings of both the sides in writ petition No. 37534/2000 that he raised the dispute alleging that his resignation was dictated by the management and his signature was taken with threat and coercion and against that plea of the first party it was contended by the second party that he was doing the job of preparation of wage sheets for various departments and to disburse the wages in cash on pay days and as usual he was given the amount in cash for disbursement for the month of February 1991 wages on 9-03-1991 and he who was to give account of wage disbursement and return unpaid wages has to the cashier within three days failed to do so up to 20-03-1991

and was avoiding submission of the accounts for one reason or the other and on verification it was found that he had drawn excess amount and on coming to know that the same was detected by the management he approached the management along with the office bearers of the two staff associations on 21-03-1991 to discuss regarding the defaults committed by him and while admitting his default assured that he will make good the misappropriated amount and when the management informed the first party and the bearers of the staff association that it is not possible for the management to pardon the default committed by the first party and disciplinary action will have to be taken against him before reporting the matter to the concerned police, representatives of both the staff association pleaded to take lenient view of the matter by accepting the resignation letter if submitted by the respondent instead of taking departmental disciplinary action and reporting the matter to the police and the amount misappropriated may be recovered from the terminal benefits that would be payable to him and after due consultation and weighing the pros and cons of the proposal by the Senior Officers of the Mill it was decided to accept the proposal of resignation on condition of making good the misappropriated amount and then after a days thinking on 22-03-1991 the first party coming along with the office bearers of both staff association submitted his resignation with a request that he may be relieved from duty from the close of 30-03-1991 and thus he submitted his resignation voluntarily without any compulsion by the management and after thorough consideration of these pleadings single judge while disposing of the writ petition No. 37534/00 set aside the award passed by the Labour Court, Gulbarga permitting the management to adjust the dues payable to him towards the licence fee and water charges of the quarter as well as the amount found to be misappropriated by him. If at all there was no misappropriation by the first party, in the letter submitted by him along with the resignation letter he would not have stated as stated therein Para (A) all dues payable by him to the mills due to non-submission of accounts may be adjusted from the gratuity payable by the mills, therefore, the first party cannot now raise any objection for adjustment of the arrears of licence fee and water charges for his over stay in the quarters provided by the management as well as the amount found to be misappropriated totalling to Rs. 80,629 from the dues payable to him by the management on acceptance of his voluntary retirement. Since as already adverted to by me above, the first party having not pleaded or produced evidence that he was entitle for any other benefits apart from the gratuity quantified by the management as on the date accepting his retirement, I am of the opinion nothing remains to be paid by way of terminal benefits to the first party by the second party. Under the circumstances I arrived at the conclusion the terminal benefits that would have been payable to the first party as per the provisions existed on the date of his resignation

i.e. 30-3-1991 being satisfied he is not entitle for any claim and on the other hand he himself is still in arrears to the management towards his over stay in the quarter provided to him, for recovery of which the second party may take recourse to law.

8. In the result, I pass the following Award:

AWARD

The terminal benefits in terms of voluntary retirement of Shri Chandra Kanth Gaekwad has been satisfied in accordance with the provisions of law existing at the time of his resignation and that he is not entitle for any relief.

(Dictated to PA transcribed by her corrected and signed by me on 29-09-2011)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2011

क्र.आ. 3241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, धनबाद नं. 2 के पंचाट (संदर्भ संख्या 15/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-10-2011 को प्राप्त हुआ था।

[सं. एल-20012/30/2002-आई आर (सी-1)]

डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 14th October, 2011

S.O. 3241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2004) of the Central Government Industrial Tribunal-cum-Labour Court-2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s BCCL and their workman, which was received by the Central Government on 14-10-2011.

[No. L-20012/30/2002-IR (C-I)]

D. S. S. SRINIVASA RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

Present : Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 15 of 2004

Parties : Employers in relation to the management of Kusunda Area of M/s. BCCL and their workman

Appearances :

On behalf of the workman : Mr. N. M. Kumar,
Advocate.

On behalf of the employers : None

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 28th September, 2011

ORDER

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their order No. L-20012/30/2002-IR (C-I), dated the 23rd December, 2003.

SCHEDULE

“Kya Jharkhand Janta Mazdoor Union ki Bharat Coking Coal Limited key pravandhtantra sey mang ki karmkar Shri Vajinath Koiri ko implementation instruction No. 76 key pravdhannusar ayau nirdharan key liey sarvochcha chikitsa parishad key samaksh bheja jaye tatha ukt parishad dwara nirdharit janm tarikh key anusar seva nivrit kiya jaye uchhit evam nayay sangat hain? Yadi ha to karmkar kis rahat key patra hain?”

2. Today Mr. N. M. Kumar, Ld. Advocate for the workman is present but Mr. S. N. Ghosh, the Ld. Advocate for the management is not present. Mr. Kumar the Ld. advocate the authorised Ld. Advocate for the Union representative for the workman submits that inspite of sending two registered notices twice by him to the workman, the workman has though received yet not appeared for the evidence in his behalf, so he appears to be disinterested to peruse the case and accordingly he urged to close the case.

3. Perused the case record, the reference relates to the demand of the Union concerned for sending the workman Bajinath Koiri to the Apex Medical Board for his age determination as per 1-1-76, and for his superannuation according to his date of birth determined by the Apex Medical Board. It stands quite clear that the case has been pending for the evidence of the workman since 18-1-2006, for which the workman did not appear even on the show cause notice through registered post dt. 18th May, 2011 to the Union concerned. As such the conduct of the workman as well as the Union representative appears to be lack lustre in persuing the case for proper adjudication. Under the circumstances, persuing the case for infinity is nothing but wastage of time and energy of the Tribunal. Hence, the case is closed and accordingly order is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2011

का.आ. 3242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, धनबाद नं. 2 के पंचाट (संदर्भ संख्या 65/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-10-2011 को प्राप्त हुआ था।

[सं. एल-20012/34/2004-आई आर (सी-1)]

डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 14th October, 2011

S.O. 3242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2004) of the Central Government Industrial Tribunal-cum-Labour Court-2, Dhanbad, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 14-10-2011.

[No. L-20012/34/2004-IR (C-I)]

D. S. S. SRINIVASARAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

PRESENT : Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 65 of 2004

PARTIES : Employers in relation to the management of Amlabad Colliery of M/s. Bharat Coking Coal Ltd. and their workman

APPEARANCES :

On behalf of the workman : Mr. S. C. Gaur,
Advocate.

On behalf of the employers : Mr. U. N. Lal,
Advocate.

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 28th September, 2011

ORDER

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their order No. L-20012/34/2004-IR (C-I), dated the 8th June, 2004.

SCHEDULE

“Kya Bharat Coking Coal Limited Amlabad Colliery key pravandhtantra dwara karmkar Shri Suresh

Miner/Loader ko dinank 21/24-1-2003 se seva se varkasth kiya jana vidiwat uchit evam nayasangat hain? Yadi nahi to karmkar kis rahat key patra hain?”

2. Mr. S. C. Gaur, Ld. Advocate for the workman and Mr. U. N. Lal, the Ld. Advocate for the management are present. Mr. Gaur, the Ld. advocate for the representative Union by filling a petition submits that more than a year also neither the Union Official nor the workman under the Reference turned up for taking further steps, so it appears that the workman is not interested to peruse the matter anymore and accordingly it may be disputed of.

3. Perused the case record. I find that though the case has been pending for the evidence of the management on the preliminary point since 17-3-06, yet no workman was present or represented since the aforesaid date except on the last dates i.e. 6-6-08 and 27-7-11 casually. According to the prayer of Mr. Gaur, the authorised Lawyer for the Union representative the conduct of the Union representative and the workman as apparent from the ordersheet, it stands clear disinterestedness of the representative Union and the workman Suresh, the Miner/Loader in persuing the case which is related to his dismissal w.e.f. 21/24-1-2003 by the management of Amlabad Colliery. Therefore, proceeding with the case for uncertainty is merely the wastage of time and energy of the Tribunal. Hence, the case is closed and accordingly order is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2011

का.आ. 3243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 747/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-10-2011 को प्राप्त हुआ था।

[सं. एल-12012/198/96-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th October, 2011

S.O. 3243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 747/2005) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Patiala and their workman, received by the Central Government on 14-10-2011.

[No. L-12012/198/96-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE**IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-II, CHANDIGARH****PRESENT:** Sri. A. K. RASTOGI, Presiding Officer**Case No. I. D. 747/2005**

Registered on 2-9-2005

Sh. S.P. Kakria, Head Cashier "E"

Thorough All India State Bank of Patiala Staff Federation,
Ward No.8,
House No.13,
Solani.

...Petitioner

Versus1. The General Manager,
State Bank of Patiala, (Operation),
The Mall, Patiala.2. The General Secretary,
State Bank of Patiala Staff Union,
Street No.15,
Pratap Nagar,
Bathinda.

...Respondents

APPEARANCES

For the workman Sh. B.L. Sharma

For the Management Sh. N.K. Zakhmi

AWARD

Passed on Sept. 22, 2011

Government of India vide Notification No.-L-12012/198/96-IR(B-I) Dated 3-2-1998, by exercising its powers under Clause (d) of sub- Section (1) and sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of State Bank of Patiala represented by the General Manager (Operation) State Bank of Patiala, in withholding the stagnation increment of Sh. S. P. Kakria, Head Cashier, Saban Bazar, Ludhiana Branch, w.e.f. 1-11-1994 is just and legal? If not to what relief the workman is entitled to and from which date?"

According to the claim statement the workman had been suspended on 23-12-1993. As per the provisions of the Para 5 of the Bipartite Settlement dated 14-2-1995 he became eligible for the 4th stagnation increment w.e.f. 1-11-1994. But the respondent-Bank did not release the same. It has been further stated that as per the provisions of Para 557 of Shastri Award and Para 17.4 of Desai Award and Para 5 of the Bipartite Settlement dated 8-9-1983 the employees under suspension eligible for the release of the- Annual Grade/stagnation increment. As per the Circular No. PER/90 dated 8th September, 1987 of the respondent-Bank also the members of Award Staff are entitled to receive Annual Grade/stagnation increment even

during the period they remain under suspension. The claimant has requested for the release of the Annual Grade/stagnation increment to the workman w.e.f. 1-11-1994 along with interest and penalties to the respondent.

Claim was contested by the management and it was contended that the workman had been suspended in connection with his involvement in the income-tax embezzlement case at Ludhiana. 4th stagnation increment was not granted to him as per guidelines issued by the Indian Banks Association and the decision regarding the grant of increment has been taken by the disciplinary authority at the time of passing final order. The workman has been dismissed from service in December, 1999 by the disciplinary authority after enquiry. As per Circular No.PER/90 dated 8-9-1987 a member of the Award Staff is not entitled to receive Annual Grade/stagnation increment during the period of suspension.

In a rejoinder to the written statement of the management the claimant has stated that the State Bank of India management has also issued instructions to release the increments to the suspended employees and pay the arrears following the orders of the Hon'ble Andhra Pradesh High Court.

In support of his case the concerned workman filed his affidavit while on behalf of management, affidavit of Sh. R.K. Malhotra, Regional Manager, Regional Office, State Bank of Patiala, Ludhiana was filed.

Written arguments were filed on behalf of workman with a copy to management-counsel. On the request of management-counsel the case had been adjourned to 8-10-2010 for the arguments of the management. But on 8-10-2010 none appeared for management and the case was again adjourned to 11-11-2010 for the arguments of the management. On 11-11-2010 the management-counsel appeared but requested for another date for arguments. But on the next date 2-12-2010 again none appeared for the management and therefore the case was reserved for orders with a further time of 15 days for the management to file written arguments. But, written arguments were not filed till date on behalf of the management.

I have carefully perused the written arguments of the workman and also the evidence on record. This is not in dispute that the 4th stagnation increment fell due on 1-11-1994 to the workman during his suspension period commencing from 23-12-1994 till his termination in December, 1999. The question is whether the management was justified in withholding the stagnation increment of the workman.

In its written statement the management has justified his action in withholding the stagnation increment of the workman on the basis of guidelines of the Indian Banks Association and the Circular No.PER/90 dated 8-9-1987.

The relevant provisions of Shastri Award, Desai Award or Bipartite Settlement have not been made available

by the parties. However Circular No. PER/90 dated 8th September, 1987 is available. In Para 2 of this circular it has been mentioned that it has been decided by Indian Banks Association Bombay that the banks may not include the increments which fall due during the period of suspension of the employee for calculation of subsistence allowance.

The learned counsel for workman however has submitted CO letter No. CDO/IR/CIR/20 dated 28-7-1998, LHO Circular No. CIR. DO/PER & HRD/40 of 1998-99 of Personnel and HRD Department of State Bank of India. Para 2 of this letter says:-

"The matter has been re-examined by the Personnel Committee of the IBA in the context of some recent decisions of Industrial Tribunals/High Courts, holding that for the purpose of calculating subsistence allowance, the annual credit increments should be taken into account. The Committee in its meeting held on 11th June, 1997 and 1st June, 1998 decided that :-

(i) Annual increments which fall due during the period of suspension should henceforth be reckoned for calculation of subsistence allowance in respect of workmen staff in accordance with the provisions of Awards/Bipartite Settlement, and

It is clear from this letter that it has no retrospective effect. This position has been clarified by State Bank of Patiala in its Circular No. PER/49 dated 19-3-1999 submitted by the workman counsel. It is clear that these circulars do not help the workman who had been put under suspension on 23-12-1993, that is, before these circulars.

However the decision of the Division Bench of the Hon'ble MP High Court in *Madhav Anant Rao Gore Vs. State Bank of India* 1987(54) SLR 403 submitted by the learned counsel for the workman is relevant for the purpose of this case. The Hon'ble High Court has dealt with the question of payment of increment and allowances during the period of suspension at page No. 408. The Hon'ble Court observed that there is a provision in Clause 17 of Desai Award in this regard. Suspension allowance is to be paid according to this provision of the Award. As per Clause 17 the suspended workman will have to be paid full pay and allowances after one year of suspension if the enquiry is not delayed for reasons attributable to the concerned workman. The Hon'ble High Court directed the bank to pay the petitioner all the accrued increments and quarterly allowances from the date of his suspension which he would have been entitled to get if he was not put under suspension.

In this case it may be noted that the workman who had been put under suspension on 23-12-1993, was charge-sheeted on 27-11-1995. What to talk of completing enquiry within one year of suspension, the management took about two years after putting the workman under suspension, to serve a charge sheet even. I am therefore of the view that in

view of the judgement of the Hon'ble MP High Court in *Madhav Anant, Rao Gore* 1987(54) SLR 403 case the action of the management in withholding the stagnation increment of the workman is not justified. The workman is entitled to the increment w.e.f. 1-11-1994. The reference is decided against the respondent. Respondent is directed to pay the arrear of the increment within one month from receiving a copy of the Award. Let two copies of the Award be sent to Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2011

का.आ. 3244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 45/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2011 को प्राप्त हुआ था।

[सं. एल-12012/179/92-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th October, 2011

S.O. 3244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/93) of the Central Government Industrial Tribunal-cum-Labour Court-No. II, Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, received by the Central Government on 12-10-2011.

[No. L-12012/179/92-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

IN THE COURT OF SHRI SATNAM SINGH
PRESIDING OFFICER CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR-
COURT-II KARKARDOOMA, DELHI

I.D. No. 45/1993

IN THE MATTER OF DISPUTE BETWEEN

Shri Ram Pratap,
Through the Gen Secretary,
SBI Staff Association, 2124/2, Hari Singh
Naiwa Street No. 58,
Karol Bagh, N Delhi-110005. ...Workman

Versus

The Asstt. General Manager,
State Bank of India, Delhi Zonal Office,
Post Box No. 673, 11, Sansad Marg,
New Delhi-110001. ...Management

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/179/92-IR(B-3) dated 9-12-1992 referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of the State Bank of India in dismissing ~~Shri Ram Pratap~~ from service with effect from 15-5-1991 was legal and justified? If not, to what relief(s) the workman is entitled to and from what date?"

2. My learned predecessor passed the award in this case on 1-10-2004 thereby holding that the dismissal of workman Ram Pratap from service with effect from 15-05-1991 was neither legal nor justified and he further ordered that the workman was entitled to be restored to the position prior to the date of the awarding of punishment to him.

3. The management bank filed a writ petition against the said award and the Hon'ble High Court of Delhi vide its order dated 7-04-2011 allowed the petition to the extent mentioned in the order and the matter was remanded to this tribunal for granting an opportunity to the petitioner (management bank) to lead evidence on misconduct and the parties were directed to appear before this tribunal on 28-04-2011. The Hon'ble High Court of Delhi has observed in its order that this tribunal after reserving orders on the arguments heard on the aspect of validity of enquiry proceed to answer the reference instead of giving an opportunity to the petitioner bank to prove misconduct before this tribunal. Thus, there has been an irregularity in the procedure before the industrial tribunal sufficient to vitiate the award impugned in the petition and the petitioner bank could not be condemned unheard.

4. Both the parties accordingly appeared before this tribunal on 28-04-2011. The management bank in order to prove misconduct of the workman has examined two witnesses namely Mr. Gurneet Singh (MW1) and Mr. M.L. Taneja (MW2). They have been cross-examined by the AR for the workman. In rebuttal to that the workman has made a statement as WW1. He too has been cross-examined by the AR for the management.

5. The case of the workman very briefly as set up in the statement of claim is that he was appointed as temporary messenger on 15-10-1980 at South Extension Part I New Delhi branch. He was absorbed in permanent service on 3-5-1983 at Roop Nagar Delhi branch. He was transferred from Roop Nagar Delhi branch to Green Park Extension New Delhi branch on 25-03-1985. According to the workman he has been charge sheeted on 17-08-1988 on the following charges:

"(i) Out of the Cheque Book No. 005051 to 005075 issued against your saving bank account no. 9740 maintained at Green Park Extension Branch, you attempted to fraudulently encash Cheque no. 005068

for Rs.20,000 by forging the signature/initial of Smt. Pushpa Bhola, Savings Bank Incharge as also by writing in your hands fictitious scroll number 165 and Cash scroll number E-19.

(ii) When you failed to obtain cash payment of the said Cheque no. 005068 you connived with one ~~Shri Chander Pal Yadav~~ to obtain payment thereof through clearing. The Cheque drawn by forging signatures of ~~Shri K. J. Chandra~~, Savings Bank account No.4493, was deposited in ~~Shri Yadav's~~ account maintained at Vijaya Bank, Ansari Road Delhi. On 14-4-88 when the Cheque was received at Green Park Branch, you surreptitiously removed it and it was recovered from your person. It was noticed that you had also embossed on it account no.10551 over account no. 4493 as the latter account did not have sufficient funds to meet the Cheque on the said date i.e. 14-4-88.

(iii) On 21-3-88, you surreptitiously removed from the table of ~~Shri V. K. Malhotra~~ a draft no. 602509 dated 17-3-88 for Rs. 5000 issued by Makrana Branch was deposited at the branch by one Ms. Marju Jain, holder of Savings Bank Account no. 12012. You handed over the said draft to ~~Shri Bal Kishan~~, Messenger at Rail Bhawan Branch for fraudulently obtaining payment thereof. Not only this, after the payment of this draft was made by Green Park Extension Branch, you again removed the paid draft from Bank's record and delivered it to ~~Shri Bal Kishan~~.

(iv) Out of another Cheque book no.760726 to 760750 issued to you, you issued Cheque no. 760747 for Rs. 20,000 in favour of ~~Shri E. Jacob~~ and yourself deposited in into his Savings Bank account no. 4434 at Syndicate Bank, Hauz Khas, New Delhi. On 6-4-88, when the Cheque was received at Green Park Branch in clearing, you entered it in Transfer Scroll at Sl. No. 98 posted it in the account of ~~Shri Ashok Kumar Pradhan~~, Savings Bank account No. 8878, in the date of 8-4-88 entered it in respective day book and modified the Savings Bank account summary.

Not only this, after the clean cash book was balanced, you surreptitiously removed the said Cheque from records and destroyed it.

The above charges, if proved, would tantamount to gross misconduct in terms of paragraph 521(4)(J) of Sastry Award read with paragraph 18.28 of Desai Award."

The departmental enquiry was conducted by an Enquiry Officer Ms. Chitra Mitra appointed by the management bank.

6. According to the workman the Enquiry Officer has acted in a mala fide, arbitrary and illegal manner in holding the departmental enquiry. That the Enquiry Officer was

biased and vindictive and she was conniving with the bank representative. That on 6-07-1989 the defence representative of the workman sought adjournment on medical grounds but the biased Enquiry Officer threatened to close the enquiry *ex parte*. That ultimately on 10-1-1991 the biased Enquiry Officer closed the enquiry *ex parte* against the workman without providing any opportunity to him. That out of 23 witnesses listed by the bank representative in support of the bank's case 22 witnesses were from the same branch where the enquiry proceedings were being conducted. That despite repeated threatening postures adopted by the management they did not turn up. Only three witnesses and that too from the supervising staff could be produced by the management bank but nothing could be proved.

7. That the Enquiry Officer illegally and arbitrarily held that all the charges had been proved violating all norms and ethics of the principles of natural justice. The workman was shocked to receive a show cause notice of dismissal dated 25-3-1991 issued by the punishing authority and he submitted his reply to the show cause notice. That the disciplinary authority did not consider the points raised by the workman and issued the dismissal order *vide* order dated 16-5-1991. The workman preferred an appeal but the appellate authority was also biased and he did not grant any personal hearing to him and summarily dismissed his appeal *vide* its order dated 9-10-1991. The workman having left with no other alternative raised an industrial dispute and ultimately the Central Government made the reference to this tribunal for adjudication.

8. The management bank has contested the claim of the workman and in its written statement has submitted that the workman has been rightly punished after holding a domestic enquiry. Further the bank is a financial institution and the employees of the bank have got fiducial relationship with it and the acts of the workman are anti thesis of trust. The workman has committed gross misconduct and appropriate penalty has been imposed on him. It is submitted that the charges levelled against the workman are all true and he had committed such acts which are mentioned in the charge sheet. The management, therefore, prayed for the dismissal of the claim made by the workman in this case.

9. The workman by filing a rejoinder has controverted the stand of the management bank and has reiterated his own version of the whole case.

10. I have heard the learned A R for the parties and have gone through the entire record including evidence adduced before this court. I have also perused the written submissions filed by both the parties. I have gone through the authorities relied upon by both the sides.

In *Workmen of Messrs Firestone Tyre Vs. Management & others*, reported in 1973 SCR(3) 587 relied upon from the side of the management it has been observed as under :

"It was further held that it is only where a tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded is perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute, when permission has to be given to an employer to adduce additional evidence. The right of an employer to lead evidence before the Tribunal to justify his action was again reiterated in *Khardah Co. Ltd. V/s. Their Workmen*(1) as follows (1)(1964)(3) S.C.R. 506." It is further held as under:

"It is well settled that if the enquiry is held to be unfair the employer can lead evidence before the Tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not, would be open before the Tribunal and the Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee."

11. The first witness examined by the management bank before this Tribunal is Mr. Gurmeet Singh Walyat (MW1) Deputy Manager (retired) and he has filed his evidence on affidavit. In his affidavit he has testified that on 14-4-1988 he had handed over the cheques received in clearing to workman Ram Partap messenger for delivering the same to the transfer scroll writer Ms. Indu Gupta and it was transpired that a Cheque for Rs. 20,000 was missing at the time of balancing of the books in the evening. The matter was reported to the branch manager and the amount was debited in the suspense account. On making further investigation it was known that the Cheque in question belonged to savings bank account of workman Ram Partap messenger and enquiries were made from him and it was smelt that he might have removed or stolen the same as there were no funds in his account to honour the Cheque. It is further mentioned in the affidavit that the workman could not reply the queries properly which led to a belief that something wrong had been done by him and then his pockets were searched by the staff members and the Cheque in question was found in his pocket. The matter was reported to the Branch Manager for further action and workman Ram Partap admitted the facts before the Branch Manager in writing *vide* letter which the witness in his affidavit has marked Ex. P.2 and the workman requested to forgive for his misdeeds and almost all the staff members of the branch including him (MW1) stood witness to the same in writing.

12. In his cross-examination, MW 1 Gurmeet Singh Walyat has admitted that Ex.P.1 is photo copy of the Cheque and not the original one. The original was returned by them to the presenting bank and as on today the said Cheque could be with them if the same has been preserved by them or they might have returned the same to the payee of the Cheque. He has also admitted in cross-examination that in photo copy of the Cheque Ex. P1 the name of the payee of the Cheque is not clearly legible. He further stated

that the matter being 23 years old he did not remember the name of the Payee. Mr. Gurmeet Singh Walyat has further stated in cross-examination that he does not know if the bank lodged any FIR against the workman or not. He also admitted that Ex. P2 is also a photo copy of the document and he does not know where the original of Ex. P2 is. He was given the suggestion that Ex. P2 was prepared in order to falsely implicate workman Ram Partap, to which he has denied.

13. A careful scrutiny of the evidence of Mr. Gurmeet Singh Walyat (MW1) would show that the original Cheque No. 005068 for Rs. 20,000 which is the basis of this case has not been produced in the court from the side of the management bank. The photo copy of the Cheque is also not clear and even as per the admission of Mr. Gurmeet Singh Walyat (MW1) the name of the payee of the cheque on that is not clearly legible. The so called admission of guilt made by the workman before the staff members and recorded in a document has also not been produced before the court. Only photo copy of the document which has been marked by the witness as Ex. P2 has been filed to which the workman has denied as according to the workman the photo copy has been prepared in order to falsely implicate him. There is no evidence of any other staff member of the branch of the bank where the incident had happened which could prove that the original Cheque was found in the pocket of the workman. There is also no evidence to show that the workman admitted any wrong done by him qua that Cheque of Rs. 20,000 the original of which has not been produced before the court. The evidence of Mr. Gurmeet Singh Walyat thus does not prove the charge levelled against the workman in charge No.1 and 2 of the alleged charge sheet dated 17-08-1988.

14. Another witness examined by the management bank is Mr. M.L. Taneja, Asstt. General Manager (retired) as MW2. He too has given his evidence by filing an affidavit. In the said affidavit he literally mentioned the wrong doings done by the workman. However, when he was subjected to cross-examination his evidence could be demolished by the AR for the workman. Mr. M.L. Taneja in his affidavit has testified that the workman attempted to fraudulently encash Cheque No. 005068 for Rs. 20,000 by forging the signatures/initials of the passing officer Smt. Pushpa Bhola, savings bank incharge by forging in his own hand fictitious scroll No. 165 and cash scroll number E-19 (on it). However, in his cross-examination he has admitted that Smt. Pushpa Bhola did not make any complaint regarding forging of her signatures/initials, fictitious scroll No.165 or cash scroll, No. E-19 as mentioned in para 2 of his affidavit to the bank authorities. Mr. M.L. Taneja MW2 in his cross-examination has admitted that there is no report by the Govt. handwriting expert or any private hand writing expert obtained by the bank authorities regarding the alleged forging of the signatures/initials of Smt. Pushpa Bhola by workman Ram Partap. Mr. M. L.

Taneja has also admitted that Ex.P.2 is only a photo copy of the Cheque and the same is not the original Cheque and the original of Ex. P.2 is not available with them. Thus, Mr. M.L. Taneja has failed to bring on record the evidence to prove that the workman had forged the signatures/initials of the passing officer Smt.Pushpa Bhola. There is also no evidence on record to prove that fictitious scroll No.165 and cash scroll No.E-19 was written on the original Cheque which is not before the court, by the workman.

15. As regards the assertion of Mr. M. L. Taneja made in para 3 of his affidavit, he has admitted in cross-examination that he has no personal knowledge regarding the alleged relationship of workman Ram Partap with Chander Pal Yadav as mentioned in para 3 of his affidavit. He then stated that only if they could look at the Cheque they could know as to how the signatures of K. L. Chandra appeared on the said Cheque and how the signatures of Ram Partap workman were removed from the said Cheque. Thus, his assertion in para 3 of the affidavit that the workman connived with one Mr. Chander Pal Yadav to obtain the payment of the cheque in question through clearing has no legs to stand upon. There is no evidence to prove that signatures of any K. L. Chandra of saving bank account No. 3393 were forged by the workman or the same was deposited by him in Mr. Chander Pal Yadav's account or that thereafter he surreptitiously removed it or the same was recovered from him. Ultimately, Mr. M. L. Taneja has admitted that he has no personal knowledge regarding his claim made in para 3 of the affidavit. He, however, added that said part of the affidavit is based on the alleged confessional statement of workman Ram Partap made by him before the bank staff. He was given the suggestion that no such thing had happened and the workman never made any such confession before the bank staff. As already pointed out above, no other staff member of the branch has been produced by the management bank to prove the assertions made by Mr. M. L. Taneja in para 3 of his affidavit. Mr. Taneja was also given the suggestion that no Cheque was recovered from the workman as has been mentioned by him in para 3 of his affidavit to which, of course, he has denied. He was also given the suggestion that no embossing was done on the Cheque as has been claimed by him in para 3 of his affidavit. He however has admitted it as correct that it is difficult to know the embossing part without having a look at the original Cheque which is not before the court.

16. As regards the claim made by Mr. M. L. Taneja in para 4 of his affidavit, he has admitted that the claim made by him in para 4 of his affidavit is also based on the confession made by workman Ram Partap before the bank staff and on no other basis. He was given the suggestion that no such confession was ever made by the workman before any bank staff. He has further admitted that only photo copies of the documents have been filed by him and no original document has been filed by them. He admitted

that exhibit marks put by him in his affidavit are merely for the purpose of identification and nothing else. In the absence of original documents before the court putting of the exhibit marks in the affidavit of the witness would not prove the documents and such photo copies cannot be held as properly proved documents on record. As regards the draft of Rs.5,000 deposited by one Ms. Manju Jain, holder of saving bank account No. 12012, Mr. M. L. Taneja has stated that he does not know if any written complaint was made by Ms. Manju Jain or there was only oral complaint/enquiries. He was given the suggestion that no draft was handed over to Mr. Bal Kishan messenger by workman Ram Partap, to which he has denied. However, he had to admit that he had not personally seen Ram Partap workman handing over the draft to Bal Kishan. Ultimately he had to admit that whatever is stated by him in para 4 of his affidavit is also based on confession having been made by the workman before the bank staff. He was given the suggestion that no such confession was made by the workman before the bank staff and they are merely inventing the same in order to fasten him with this liability. Mr. M.L. Taneja then volunteered that his affidavit is also based on bank record. He, however, had to admit that no such bank record has been produced before the court nor a copy of any such record has been supplied to the workman.

17. As regards the assertions made by Mr. M. L. Taneja in para 5 of his affidavit, he in cross-examination has stated that it may be correct that copy of the Cheque book register may not have been supplied to the workman. He was given the suggestion that the assertion made by him in para 5 of the affidavit are all baseless and have no legs to stand upon and the same are merely imaginary and there is no evidence to support it to which he of course has denied, but no solid evidence has been brought on record in support of such assertions. Thus the evidence of Mr. M.L. Taneja is also not helpful to prove the charges levelled against the workman by way of alleged charge sheet dated 17-08-1988.

18. No evidence allegedly brought on record by the management bank before the enquiry officer or before the matter came before this court, which could throw light on the conduct of the workman has been shown to the court from the side of the management bank.

19. In rebuttal to the above evidence the workman has filed his own affidavit. He thereby has refuted the allegations of the management bank and has claimed his innocence in this case. According to him, he is getting Rs. 2860 per month as minimum wages as per the orders of the Hon'ble High Court. He stated that he used to get Rs. 1400 per month as salary after deductions in the year 1988 and he makes both ends meet with great difficulty.

20. On consideration of the entire material brought on record in this case including the evidence led before this tribunal by both the parties, it is evident that the

management bank has failed to prove the charges levelled against the workman by way of alleged charge sheet dated 17-08-1988. There is absolutely no evidence on record to prove that on 21-03-1988 workman Ram Partap surreptitiously removed draft no. 602509 dated 17-03-1988 for Rs. 5000 from the table of Shri V. K. Malhotra or the said draft was handed over to Mr. Bal Kishan messenger at Rail Bhawan branch for fraudulently obtaining the payment thereof or that after the payment of this draft was made by the Green Park Extension branch, Ram Partap again removed the said draft from the bank records and delivered it to Mr. Bal Kishan as alleged in charge sheet dated 17-08-1988. It therefore, cannot be held that the action of the management bank in dismissing Ram Partap from service with effect from 15-05-1991 was legal and justified. As the action of the management bank in dismissing Ram Partap from service with effect from 15-05-1991 is neither legal nor justified it has to be seen as to what relief/reliefs the workman should be held entitled to in this case.

21. The dismissal of the workman took place on 15-05-1991 and thus more than 20 years have already elapsed. The workman was appointed as temporary messenger on 15-10-1980 and he was absolved in permanent capacity on 3-05-1983. Thus at the time of his dismissal he had already put in more than 10 years in service in the bank.

Keeping in view all aspects of the matter including the case of Murari Lal Sharma Vs. Nehru Yuva Kendra Sangathan, reported as 96(2002)DLT 412. I direct reinstatement of workman Ram Partap in service with continuity of service and 25 per cent of back wages from the date of his dismissal till such time he was granted 17-B wages by the order of the Hon'ble High Court of Delhi in this case. The award is passed and reference stands answered accordingly.

Dated: 28-09-2011

SATNAM SINGH, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2011

का.आ. 3245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 75/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2011 को प्राप्त हुआ था।

[सं. एल-41012/49/2004-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 17th October, 2011

S.O. 3245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.75/2004)

of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Central Railway and their workman, received by the Central Government on 17-10-2011.

[No. L-41012/49/2004-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT:

JUSTICE G. S. SARRAF, Presiding Officer

REFERENCE NO. CGIT- 1/75 OF 2004

Parties:

Employers in relation to the management of Central Railway

And

Their Workman (Shri Tula Ram Singh)

APPEARANCES:

For the Management : Mr. Abhay Kulkarni, Adv.

For the Workman : Mr. M. B. Anchan, Adv.

State : Maharashtra

Mumbai, dated the 19th day of September, 2011.

AWARD PART-II

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:

"Whether the action of the management of Central Railway, Mumbai, through its officers in dismissing the services of Sh. Tula Ram Singh, Sr. Booking Clerk by imposing the punishment of 'Removal from Service' vide their Memo No. BB/C/CON/48/99/60 dt. 24/29 July, 2002 is justified, proper and proportionate to the alleged charges of misconduct? If not, to what relief the workman is entitled to and from which date?

2. It is not necessary to re-state the facts here because the facts in detail have been narrated succinctly in the Award Part-I dt. 13-4-2011 passed by this Tribunal. By the aforementioned award it was held that the finding given by the Enquiry Officer Shri A. B. Mantri was wholly unjust, illegal and perverse and the first party was given an opportunity to prove the charge against the workman Tula Ram Singh by leading evidence before this Tribunal.

3. The first party failed to avail the opportunity and did not lead any evidence before this Tribunal to prove the charge against the workman Tula Ram Singh.

4. Heard Shri Kulkarni learned counsel for the first party and Shri Anchan learned counsel for the second party workman.

5. The charge against the workman is as under:

That while functioning as a Senior Booking Clerk, Central Railway, Mumbai during 1995-1996 he committed gross misconduct inasmuch as he supplied 23 fake SPTM tickets for destination Ghatkopar to BBVT/DKRD/BA via VDLR bearing Nos. 41301 to 41323 and 12 fake SPTM tickets for destination Ghatkopar to ULNR/ABY and back bearing Nos. 21091 to 21099 as genuine tickets to Dulipchand, Junior Booking Clerk for sale on 05-6-1995 from window no. 5 of DNLT Booking Office, Ghatkopar Railway Station, Mumbai.

The first party has not adduced any evidence after passing of the Award part-I and thus it is absolutely clear that the above charge is not proved.

6. In view of the above I am of the opinion that the action of the management of Central Railway, Mumbai dismissing the services of the second party workman Tula Ram Singh, Booking Clerk by imposing the punishment of removal from service vide Memo no. BB/C/CON/48/99/60 dt. 24/29 July, 2002, is not sustainable and the second party workman is entitled to reinstatement.

7. In the facts and circumstance of the matter I find it just and proper to award 75% back wages.

8. Consequently, the first party is directed to reinstate the second party workman Tula Ram Singh within a period of two months from today with 75% of the back wages.

9. Award Part-II is made accordingly.

Justice G. S. SARRAF, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2011

का.आ. 3246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बजाज इलेक्ट्रिकल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में राष्ट्रीय औद्योगिक अधिकरण, मुंबई के पंचाट (संदर्भ संख्या 2/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2011 को प्राप्त हुआ था।

[सं. एल-42012/144/2004-आई आर (सी-II)]

डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 17th October, 2011

S.O. 3246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2004) of the National Industrial Tribunal, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bajaj Electricals Limited and their workman, which was received by the Central

Government on 17-10-2011.

[No. L-42012/144/2004-IR (C-I)]

D. S. S. SRINIVASA RAO, Desk Officer

ANNEXURE

**BEFORE THE NATIONAL INDUSTRIAL
TRIBUNAL, MUMBAI**

PRESENT : JUSTICE G. S. SARRAF, Presiding Officer

REFERENCE NO. NTB-2 OF 2004

PARTIES : Employers in relation to the management of
Bajaj Electricals Limited

And

Their workmen

APPEARANCES :

For the Management : Mr. C.V. Pavaskar, Adv.

For the Federation : Mr. P. Chidambaram,
Representative

State : Maharashtra

Mumbai, dated the 20th day of September, 2011.

AWARD

In exercise of the powers conferred by sub-section (1-A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) the Central Government has referred the following dispute to this Tribunal :

“Whether the action of the management of Bajaj Electricals Limited in discontinuing payment of ex-gratia from the accounting year 2001-02 at the rate of 20% to the employees, who are not covered under Payment of Bonus Act is legal and justified? If not, to what relief the workmen are entitled?”

According to the statement of claim submitted by the second party Federation since inception the first party has been paying ex-gratia amount of Rs. 6,000 in lieu of bonus to each employee who is not entitled to receive bonus as per the Payment of Bonus Act. The first party has, however, denied payment of ex-gratia in the financial years 2001-2002 and 2002-2003 whereas during the above financial years the first party has paid 20% bonus to those employees who are not entitled for it as per the Payment of Bonus Act. The ex-gratia amount is paid to the workmen as a custom, usage and practice in the first party company. Before stopping payment of ex-gratia the first party company has not served any notice under Section 9-A of the Act to the concerned workmen and as such the said discontinuance being in breach of Section 9-A of the Act is illegal and void ab-initio. Hence, the Federation has prayed that the first party company be directed to pay ex-gratia amount of Rs. 6,000 p.a. to the workmen for the financial years 2001-2002 and 2002-2003 together with interest @ 24% p.a.

The first party company has filed written statement wherein it has stated that the demand in question in respect of ex-gratia payment in lieu of bonus is not a condition of service of the workmen and the first party company only by way of goodwill declared ex-gratia payment in the past. The very expression ex-gratia connotes its gratuitous character and the same cannot be claimed as a matter of right. The ex-gratia payment is not in the nature of customary bonus or profit bonus or festival bonus and there is no right vested in the workmen to claim ex-gratia in lieu of bonus. The first party has paid ex-gratia only when it has made profit and the Federation is not justified making a demand for ex-gratia when the first party company has incurred heavy losses in the above two financial years. It has been stated in the written statement that the employees in this reference are not workmen under the provisions of the Act. On plain perusal of balance sheet for the year 2001-2002 it is evident that the first party company has made operating losses to the tune of 86.52 lakhs and for financial year 2002-2003 the first party company has suffered operating losses to the tune of Rs. 13.47 crores. There is no statutory obligation that regardless of financial losses the first party company has to pay ex-gratia. The company had to take an administrative decision not to pay ex-gratia amount during the said financial years as one of the measures to curb the expenditure. The entire objective of paying the ex-gratia amount was to bring such employees at par with those who were entitled to receive statutory bonus. However, such payment of ex-gratia amount was an absolute discretion of the first party company and no legal obligation was cast upon it to pay such amount.

The Federation filed a rejoinder in which it reiterated its stand.

Following issues have been framed :

- (1) Does the second party prove that payment of ex-gratia in lieu of bonus is/was condition of service of the employees under reference? If so, its discontinuance is bad for violation of Section 9-A of the Industrial Dispute Act ?
- (2) Whether the ex-gratia payment can be claimed as a matter of right ?
- (3) Does the second party prove that irrespective of the heavy financial loss suffered by the First Party Company during the Accounting year 2001-2002 and 2002-2003, the employees concerned are entitled to receive the ex-gratia ?
- (4) Whether the reference is in conformity with the provisions of the Bonus Act, 1965 or it seeks to claim Bonus on behalf of ineligible employees, under the garb of Ex-gratia payment ?
- (5) Whether the discontinuance of payment of ex-gratia is not covered under the payment of Bonus Act ? If so, whether the workmen are still entitled to claim the ex-gratia as a customary payment ?

(6) To what relief if any, the workmen are entitled?

The second party has submitted affidavits of Vaitheeswaran Subramanian and Appu Kuttan Muralaeddharan who have been cross-examined by learned counsel for the first party company and the first party company has submitted affidavit of Anant Mart and Purandare who has been cross-examined by the representative for the second party Federation.

Heard Shri P. Chidambaram representative of the second party Federation and Shri C.V. Pavaskar, learned counsel for the first party company.

Issues Nos. 1, 2 & 5:

It is not disputed that since inception the first party has been paying ex-gratia to the workmen who are not entitled to receive bonus under the Payment of Bonus Act except in the financial years 2001-2002 and 2002-2003. As a matter of fact, the first party has admitted in its written statement that the entire objective of paying the ex-gratia amount is to bring the workmen at par with those who are entitled to receive statutory bonus. It is thus clear that there exists a system or practice or a scheme for payment of ex-gratia to the workmen. When we turn to the 4th schedule of the Act we find mentioned therein various conditions of service of the workmen. Item no. 8 of the 4th schedule relates to withdrawal of any customary concession or privilege or change in usage. A mere look at the provisions contained in Section 9-A of the Act shows that if an employer proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the 4th schedule such change has to be preceded by the procedure laid down in that section. In other words, before any change in the above condition of service of the workmen is to be effected, as a pre-condition to the said proposed change, notice under Section 9-A of the Act is to be issued. Since the practice or custom of paying ex-gratia to the workmen has continued right from the beginning except in the two financial years namely 2001-2002 and 2002-2003, therefore, it can safely be said that there exists a custom or usage to pay ex-gratia to the workmen and as such without notice under Section 9-A of the Act proposed change cannot legally come into operation.

Payment of ex-gratia is a condition of service of the workmen and as such their right and its discontinuance is bad on account of violation of the provisions contained in Section 9-A of the Act.

Issue nos. 1, 2 and 5 are, therefore, decided against the first party and in favour of the second party workmen.

Issue No. 3: Learned counsel for the first party has not been able to show any law per rule where-under financial losses suffered by the first party company exonerates the first party from its liability to pay ex-gratia amount to the workmen. The workmen are entitled to receive ex-gratia amount as a matter of right irrespective of

any profits or losses made or suffered during a particular financial year.

Issue no. 3 is, therefore, decided against the first party.

Issue No. 4: Learned Counsel for the first party is not able to show how the reference violates the provisions of the Bonus Act.

Issue no. 4 is, therefore, decided against the first party.

Issue No. 6: The workmen are entitled to receive ex-gratia payment for the financial years 2001-2002 and 2002-2003.

The first party company is directed to make ex-gratia payment to the second party workmen for the financial years 2001-2002 and 2002-2003 within a period of two months,

An Award is made accordingly,

Justice G. S. SARRAF, Presiding Officer

नई दिल्ली, 18 अक्तूबर, 2011

का.आ. 3247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटी 18/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-8-2011 को प्राप्त हुआ था।

[सं. एल-40012/82/2006-आई आर (डी यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 18th October, 2011

S.O. 3247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGITA-18/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Posts and their workman, which was received by the Central Government on 2-8-2011.

[No. L-40012/82/2006-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR COURT,
AHMEDABAD**

Present : Binay Kumar Sinha, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated 28th July, 2011

Reference: CGFT A of 18 of 2007 New

1. The Superintendent of Post Office,
Department of Posts,
Kachchh Division,
Bhuj-370001

2. S.D.I (P), Bhachau,
Sub Division,
District-Kutch

...First Party

And their workman
Shri Fakir Gulabsha Hasambhai,
Post Samkhiyari,
Tal. Bachau,
Kutch.

....Second Party

For the first party : Shri P.M. Rami, Advocate

For the second party workman : None

AWARD

An industrial dispute arose between the employer in relation to Management of Department of Posts and their workman Shri Fakir Gulabsha Hasambhai and on failure of conciliation efforts, and on sending failure of conciliation report, the appropriate Government, the Government of India, Ministry of Labour & Employment, Shram Shakti Bhavan, considering an Industrial Dispute existing between employer and their workman sent this reference in exercise of power under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Dispute Act, 1947, vide its order No. L-46012/82/2006-IR (DU) New Delhi dated 12-01-2007 for adjudication by this Tribunal in terms of reference under the schedule as follows:—

SCHEDULE

“Whether the action of the management of SDI (P), Bhachau Sub-Division and Superintendent of Post Offices, Kutch Division, Bhuj in terminating the services of their workman Shri Fakir Gulabsha Hasambhai with effect from 01-06-2005, is legal and justified? If not, to what relief the workman concerned is entitled to?”

(2) Notices were sent to both parties to this reference. Consequent upon issuing notices, the first party Superintendent of Post Offices Bhuj, appeared and filed power (vakalatnama) in favour of Shri P.M. Rami, Assistant Government Pleader, Labour Industrial Court, Ahmedabad for looking after the interest of the first party. But in spite of series of notices sent to the second party workman for his appearance and for filing statement of claim with papers for supporting his claim in this case did not appear and file S.C. From the record, it appears that on 07-10-2008 an application was filed on behalf of the second party workman for grant adjournment to file the statement of claim without filing any vakalatnama in favour of any lawyer or any authority, letter permitting the representative of union to

represent him in this case. Thereafter the second party workman did not appear. Again reminder notices were sent from the State Tribunal Court where this record was pending. Lastly, on transfer of this record to this tribunal, fresh notice to both sides were issued vide Ext. 13. Shri P.M. Rami holding power for the first party management of Superintendent of Post Office appeared and filed pursis regarding stopping the evidence of the second party on several dates vide Ext. 14, 15. Lastly by filing such pursis on 14-07-2011 vide Ext. 16. On calling out the case repeatedly no one appeared on behalf of the second party. So, this tribunal has reason to believe that the second party workman has lost interest to contest this reference. In the circumstances the following award is passed.

ORDER

This reference is dismissed for non prosecution.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2011

का.आ. 3248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़, के पंचाट (संदर्भ संख्या 285/2k5) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2011 को प्राप्त हुआ था।

[सं. एल-41012/160/95-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 19th October, 2011

S.O. 3248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 285/2k5) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workmen, received by the Central Government on 17-10-2011.

[No. L-41012/160/95-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

**IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-II, CHANDIGARH**

Present: Sri A.K. Rastogi, Presiding Officer.

Case No. I.D. 285/2K5

Registered on 10-8-2005

Sh. Kamaljit Singh S/o Sh. Mehar Singh, R/o Village Dabhotra, Tehsil Nalgah, Distt. Solan

...Petitioner

Versus

1. The Divisional Railway Manager, Northern Railway, Ambala Cantt.
2. The Permanent Way Inspector Northern Railway Station Rupnagar.

...Respondent

APPEARANCES

For the Workman : Sh. J.P. Singh
 For the Management : Sh. N.K. Zakhmi

AWARD

Passed on Sept. 22nd, 2011

Government of India vide Notification No. L-41012/160/95-IR(B-I) Dated 19-11-1996, by exercising its powers under Section 10 (1)(d) and sub-section (2A) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), has referred the following Industrial dispute for adjudication to this Tribunal :—

“Whether the demand of the workman Sh. Kamaljit Singh S/o Sh. Maher Singh that his services were terminated w.e.f. 27-4-1994 by the management of Northern Railway is legal and justified? If so, to what relief the workman is entitled?”

The workman raised an industrial dispute by stating that he was in the service of the Northern Railway since 5-2-1984 as petrol pump Gangman. He was a work charge employee. He worked till 22-7-1994. He however fell ill on 22-7-1994 and therefore he submitted an application for three days leave on medical ground. He was not allowed to join after availing these days medical leave from 24-7-1994 to 26-7-1994 following the written order of the Assistant Permanent Way Inspector (APWI) to Nand Lal, Jamadar. He continuously went to attend his duty for one month but his presence was not marked by the said APWI and Jamadar. He made a representation to PWI Ropar against the action of APWI but no action was taken. Consequently he issued a demand notice on 12-12-1994. The Assistant Labour Commissioner (Central), Chandigarh directed the respondent to treat the workman on duty with continuous service but the order was not complied with. After the conclusion of the proceedings before the Assistant Labour Commissioner (Central), Chandigarh and after the reference, he was charge sheeted on 1-4-1997 and after conducting an ex-parte enquiry his services were terminated on 17-9-1998. He has alleged his termination on 22-7-1994 and as well as subsequently on 17-9-1998. According to the workman he had been in continuous service for more than ten years and his services could not be terminated without complying the provisions of Section 25F of the Act. He has requested for setting aside the order dated 22-7-1994 and 17-9-1998 and for his reinstatement with continuity of service and full back wages.

Claim was contested by the management and it was contended that the workman had been found absent

from duty in the intervening night of 22nd and 23rd July, 1994 during surprise check of his incharge. He thereafter wilfully absented himself from duty and till date he is absconding. It was denied that APWI had given any order to Nand Lal Jamadar to terminate the services of the workman and it was stated that he was not empowered either to do so or to put the workman back on duty without the prior permission of the competent authority. It was admitted that during the course of conciliation proceedings the workman had been asked to join his duty without back wages. According to the management the workman refused to come to the office of the management for his duty without the salary of his absence period and otherwise also he did not approach the management for duty. Management has stated that it never terminated the service of the workman on 27-04-1994 rather the latter had abandoned his job wilfully and the termination letter was issued later after holding a fair and proper enquiry in accordance with the rules.

It may be noted that the reference is about the termination of the service of the workman w.e.f. 27-7-1994. The termination of the service of the workman on 17-9-1998 following a charge sheet dated 1-4-1997 and the following enquiry proceedings are beyond the scope of reference.

The short question involved in this matter is whether the services of the workman were terminated on 27-7-1994 by the management and if so whether the termination was in accordance with the law.

In support of the case the workman filed the affidavits of and examined himself; Nand Lal and Jagbir Singh. While on behalf of the management Sh. Rajender Kumar Kalra, Assistant Engineer Northern Railway, Sirhind filed his affidavit and gave his statement.

I have heard the learned counsel for the parties and perused the evidence on record. According to the workman he was not allowed to join after his availing medical leave from 23-7-1994 to 26-7-1994 and thus the management terminated his services without complying the provisions of Section 25F of the Act. While according to the management his services were terminated on 17-9-1998 and not earlier after holding an enquiry on the charge of his unauthorized absence. The workman himself had abandoned his job wilfully after 22-7-1994.

The workman and his witnesses Sh. Nand Lal and Gurdev Singh all have stated that Sh. Darshan Singh APWI had given written order dated 22-7-1994 Exhibit 1 for not taking the workman on duty. But the question is that what authority an APWI had to terminate the service of a workman and whether the orders were having a binding effect on his juniors? Whether on the basis of the order of an APWI it may be said that the services were terminated by the management.

It may be noted that management has pleaded and it has been stated also in the affidavit of its witness that

APWI had no power to terminate the service of the workman. In his cross-examination the workman has admitted that he had not made any written complaint to any authority that the official is not allowing him to join the duty. I am of the view that on the basis of the order, even if there was any of an incompetent person the services of the workman cannot be treated to have been terminated by the management on 27-7-1994.

It is therefore held that the services of the workman were not terminated with effect from 27-7-1994 by the management of Northern Railway. The workman is not entitled to any relief on the basis of the alleged illegal termination. The reference is answered against the workman. Let two copies of the Award be sent to Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2011

का.आ. 3249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, धनबाद, नई दिल्ली के पंचाट (संदर्भ संख्या 4/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-10-2011 को प्राप्त हुआ था।

[सं. एल-12012/368/2000-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 19th October, 2011

S.O. 3249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/2001) of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-10-2011.

[No. L-12012/368/2000-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2. AT DHANBAD.

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 4 of 2001

Parties : Employers in relation to the management of State Bank of India, Patna and their workman.

Appearances :

On behalf of the : Mr. D.K. Jha, Advocate
workman

On behalf of the : Mr. N. Gupta, Advocates
employers

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 20th Sept., 2011

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-12012/368/2000/IR(B-I) dt. 11-01-2001.

SCHEDULE

“Whether the action of the management of State Bank of India, Patna is not considering the workman Sri Laxman Tewary for re-employment, while making appointment of fresh hands i.e. Sri Rabindra Kumar, Sujit Kumar, Mahendra Rai, Bindeshwar Paswan, Jai Prakash Ojha in the year 1993-1997 and Sri Gauri Shanker Singh, Gopal Mehta, Chandan Singh, Vijay Kumar, Harish Chandra Thakur, Kapil Kumar & Arbind Kumar, is justified? If not to what relief is the workman entitled?”

2. The case of the workman Laxman Tewary as in his Written Statement is that he joined the service as a subordinate staff in the State Bank of India, Main Branch, Patna, on 15-4-72 at monthly pay Rs. 116 with D.A. and House rent allowance, and continued to serve therein upto 5-7-75. The management issued him appointment letter for the said period except for the period from 6-7-74 to 5-7-75 during which he was a orally appointed for it. The Management paid his wages through the Charge Register. It also issued him the Certificate of work for 270 days for the aforesaid period, during which it had changed the mode of his working by taking work from him as a casual workman on daily rate basis in place of his previously monthly basis. It orally terminated his service on 5-7-75 as conveyed by its Branch Manager, without conspicuous display of the seniority list on a Notice Board several days before his termination contrary to the mandatory Rule 77 of the Industrial Dispute (Central) Rules, 1957 her a notice issued to him as per its Rule 78 for his re-employment. Thereafter the management appointed a lot of fresh hands S/sri Rabinder Kumar, Sujit Kumar, Mahendra Rai, Bindeshwar Paswan, Jai Prakash Ojha, Kanshi Kumar, Awdesh Kumar Singh, Kumar Murli Dhar, Sanjay Pandit, Udai Mishra Bhairo Tewary and Ashok Gupta in the year 1993-1997 in the L.H.O. Patna, and S/Sri Gauri Shankar Singh, Gopal Mahato, Chandan Singh, Prem Shankar Singh, Vijay Kumar, Harish Chandra Thakur, Kapil Kumar and Arbind Kumar in the year 2000. Since the termination of his service on 5-7-75 after the close of the business of the Bank is retrenchment U/s. 2(oo) and U/s. 25H of the Act, so he is entitled to his re-employment.

2. The workman in his rejoinder has pleaded that the Industrial Dispute under reference is related to

re-employment of the workman, and it was filed himself U/s.2A of the Act when the appointment of fresh hands in the year 1993-2000 as cause of action arose for it, and finally on 30-1-2000 at his demand notice. The Act provide not any limitation for it. The Chief General Manager being over all head Authority of all the integrated Branches of the Bank in Bihar State is made a party to it. The workman had not, raised any I.D. dealt with in ALC(C) Patna file No. 1/19/97. The Circular issued from 84 to 91 as referred by the Bank Management are not binding upon or applicable to the workman as per the aforesaid Central Rules as casual workman are not made the members of the Association by signing any bipartite settlement. The Management cannot avoid the statutory provision of the Act/Rules. Since the stipulation as amended and contained U/s 2(oo)(bb) of the Act came into effect from 21-8-84, having not retrospective effect is not applicable to the case of the workman, who was terminated in the year 1975. The workman as a subordinate staff performed the duties i.e. bringing and posting of "DAKS" keeping Ledger on the table and in the Almirah after day work in addition to sprinkling water. The SBI as a State must account for the maintenance of the service record of the workman.

3. Whereas specifically denying the aforesaid allegations, the case of the management is that the present reference is based on the same facts of the reference earlier rejected as state by the Govt. of India, Ministry of Labour, New Delhi, as per letter No. L-12012 dtd. 12-5-99, so it is bad in law. The Chief General Manager, State Bank of India, Local Head Office, Patna, cannot be made a party, for the Officer-in-Charge of the concerned establishment under section 2(g)(1) of the Act the employer under Rule 2(g)(i) of the I.D. (Central) Rules. The Applicant Tiwary as per his application dtd. 5-08-1988 in the File No. 1/19/97 before the ALC(C) II worked as temporary workman for 67, 85, 79 and 46 days in the years 1972 to 1975 respectively.

4. As per Circular No. 77 dtd. 17-05-84 of the Management, the temporary employees (unprotected ones) with qualification non-matriculate but not below class 8th pass completing their service for at least 90 days or more but less than 240 days in 12 calendar months or less as on 31-10-84 were given a chance for permanent appointment. Thereafter according to the Circular No. 88 dtd. 14-4-88 based on the Bipartite Agreement dtd. 17-11-87 as its Annexure, in addition to the temporary employees putting less than 90 days service as on 31-10-84, the temporary ones completing their temporary services in 12 months or less, 270 days aggregate in continuous Block of 36 months and 30 days aggregate in any calendar year or a minimum 70 days aggregate in continuous Block of 36 Calendar months and after 01-07-75 under the category A, B and C respectively were given chance for permanent appointment, but those temporary employers who unfulfil the aforesaid prescribed criteria i.e. not filling within the age group of 18-26 years (with permissible relaxation for SC/ST etc) and those worked

on casual basis or an adhoc fixed remuneration but not on regular scale of pay as per bipartite settlement para 11 were not to be given such chance. The present dispute is unmaintable as per para 12 of the said settlement, for it stipulated all the disputes raised by an affiliated of the federation or an individual employee or anybody in that regard to the above matter would be deemed as settled. Then as per the circular No. 11 dtd. 06-04-91 following the subsequent agreements dtd. 16-07-88 and 27-10-88 between the Bank and All India State Bank of India Staff Federation, even certain daily wagers who were not eligible were also given a chance for consideration of their permanent appointment, but the xerox copy of the application dtd. 05-8-88 signed by Sri Tiwary transpired that he worked prior to the year i.e. 01-07-75, and he was Class VII pass, hence his application was not entertainable on that score only in terms of the aforesaid circular.

Further case of the Management is that as per the aforesaid circular issued in response to, as also the five settlements dtd. 17-11-87, 16-07-88, 27-10-88, 09-01-1988 and 30-07-96, the vacancies arising upto Dec., 1994 were to be filled up from the panel based on seniority which was to lapse on 31-3-97 as per MOU dtd. 22-02-97 and thereafter any of the rest candidates of the panel has got no claim for the consideration of appointment in the Bank's service. The present case, more than 25 years, of which the Bank/ has though no record (Annexure I application) yet assuming his work for the period as stated, is untenable in the eye of law. Even the photo copies of four documents as per the list dtd. 29-01-2003 filed by Sri Tiwary refer to the sentence "the appointment will be deemed to have come to an end at the expiry of the aforesaid period." Therefore, the alleged appointment was not a retrenchment under Sec. 2(oo)(bb) of the Act. Sri Tiwary was a casual labour engaged for seasonal nature of work such as keeping Khas-Khas wet by sprinkling work during summer season.

5. The Management in its rejoinder has alleged that the Management is legally bound to preserve only those records prescribed under Rule 2 and 3 of the Banking Companies (Period of Preservation of Records) Rules 1955 framed U/s. 454 of the Banking Regulation Act, 1949, so it is too impossible to believe the petitioner worked for few days in 1972 to 75 as well as to maintain any record for that period after 25 years. All expenses of the Bank are done by the charges Account. The aforesaid contractual appointment was terminable by the lapse of time. Sec. 25H of the Act and Rule 77 & 78 being no retrenchment of the petitioner are not applicable to it. All Sri Ravindra Kr., Mohindra Ray, Bindeshwar Paswan, Awadhesh Kr. Singh, Kumar Murlidhar, Sanjay Pandit, Jai Prakash Ojha, Sajeet Kumar and Uday Mishra were appointed as per rule whereas the names of Kaushal Kumar Bahiro Tiwary and Ashok Kumar Gupta as per the aforesaid circular and the settlement, the eligible candidates were appointed out of the panel.

Finding with reasoning

6. In this case, WW-1 Laxman Tiwari, the petitioner self on his behalf, MW-1 Bachan Tiwary and MW-2 Chandradip Prasad Srivastava in behalf of the Management have been examined.

On the scrutiny of the materials available on the case record, I find the admitted facts of the petitioner are as under :

- (i) he is class VII pass. He was engaged as a casual worker on 15-4-1972 on daily wages but he has not served 240 days or more continuously for the period in issue. The photo copy of his application (Form dt. 05-8-88 - Ext. M-1) is written in his pen and signature as Annexure II of the W.S. of the Management and he accepts the contents of hrs application Form correct.
- (ii) Each of his all the four appointment letters in English (Extt. W-1 series including two photo copies of his such letter Extt. W1/1 and 1/2) stipulate verbatim as such :

“This appointment letter will be deemed to have come to an end at the expiry of the aforesaid period, unless in the meantime extended at discretion of the Bank for a further period or periods”.

7. The statement of WW-1 Laxman Tiwari (the workman) is that as per his appointment letter (Extt. W-1 series), he was employed on daily wages @ Rs. 116 P.M. for the period 15-4-72 to 5-7-75 out of which the original appointment letter for the period from, 21-7-72 to 28-7-72 and 18-4-73 to 30-7-73 being destroyed in the flood, but their photo copies filled as per his affidavit (Ex. W-2). He got pay through the Charge Register. But he was orally terminated from his work since 6-7-75 by the Bank which appointed new persons Uday Mishra, Bhairi Tiwari, Ashok Kumar Gupta, Ravindra Kumar, Sujit, Mahendra Roy, Bindeshwar Paswan, Jai Prakash Ojha, Awdhesh Kr. Singh, Kumar Murlidhar and Kaushal Kumar in the year 1993, 1997 and 2000, without pasting his (workman's) seniority list on the Notice Board and without any notice of its vacancy. So he demanded from the Bank for his re-employment through his demand Notice (its carbon copy dt. 21-1-2000 Ext. W-3) by two registered postal receipt Ext. W.4 to W-4/1 with the acknowledgement (Extt. W-4/2). Though the workman expressed his ignorance of any agreement between the Management and the Union and the advertisement for appointment of casual labour Uday Mishra and others.

8. Whereas the statement of MW-1 Bachchan Tiwary posted as the Special Assistant, SBI, Patna is that during his tenure at the Bank Lachchan Tewary (the petitioner) as per his appointment letters (Extt. W-1, 1/1 and 1/2) as casual labour on daily wages performed the work of sprinkling water in “Khas Khas” during Summer season of the year 1972, 1973 and 1974. All his appointment letters bear the

term “Temporary” When the work of the concerned workman was over, his engagement automatically came to an end. As per the rules as in its Circulars dtd. 14-4-1988, 17-5-1984, and 6-4-1991 (the copies thereof Marked as Ext. M-1 series with objection) of the Management relate to appointment of Clerks and subordinate staff, other persons were appointed by the Head Office and the Branch Manager had no power to appoint or remove a person except the temporary one. The workman had submitted his complete application for regular appointment, but the present reference refers to his claim for re-employment. According to this witness (MW-1), the copy of the Notice (Ext. M-2 which is without signature and date) which was received with the Circular (dtd. 17-5-84- Ext. M-7/1), was pasted on the notice Board prior to the fresh appointment. No person engaged for less than 240 days was appointed.

9. MW-2 Chandradip Prasad Srivastava, Dy. Manager SBI, Patna Main Branch, has simply proved the document related to the recruitment of Clerical and Subordinate staff of SBI, the encyclopaedia of the instruction for preservation of the records and the photo copy of the Circular dtd. 14-4-1988 of the Personal Department issued by Local Head Office as Extt. M-3, M-4 and M-5 respectively, as he has been working since 4th Oct, 2004.

10. Shri D.K. Jha, the Learned Advocate for the workman submits, relying upon the authorities to be referred under bracket, that workmen, part time, contractual, temporary or casual all are workman (2011 AIR SCW 3435 (DB)-(A), Devinder Singh-V- Municipal Council Sanaur-Paras 13, 14) and that reference of Industrial dispute to Labour Court is not subject to limitation under Art. 137 of the Limitation Act (1999) 6 SCC 82 (DB), Ajab Singh-Vrs-Serhinal Co-operative Marketing, related to Sec 10 and 33C of the Act. The present case has though the employer's plea of inordinate delay yet without proof or the point of real prejudice to him, so only the former submission appears to be meritorious.

Further plea of Mr. Jha, the Learned Advocate for the workman is that Employment must be shown to be under a contract which stipulates that it would come to an end with the expiry of the Project or scheme and the workers must be made aware of such stipulation at the commencement of their employment. Mere Proof of employment of casual workers on daily wages in a project or scheme and termination of their services on the project or the scheme coming to an end is not enough to attract the exception of sub-cl (bb), it being inapplicable, so it was held termination amounted to retrenchment (2003 SCC (L&S) 380(DB), S.M. Nilajkar V. Telecom Dist. Manager, Karnataka); and he (Mr. Jha) also submits, referring 1990 LAB I.C. 174 AP (SB) (B) R. Sreeniva Rao V. Labour Court related to I.D. Act (14 of 1947) Sec.2(00)(bb) (as amended by Act 49 of 1984) as held therein, that ‘The main part of S. 2 (oo) of the Act speaks of termination ‘for any reason’ as amounting to retrenchment. In the absence of clear intention, the first of sub-cl(bb)(as amended by Act 49 of

1984) cannot be interpreted to take in the termination of the services of the casual labour on daily wages. Perse termination of casual labour on daily wages in clearly outside the first part of sub-cl (bb) of Sec. 2(00) and was never intended to be excluded from the definition of 'retrenchment'. The 'contract of employment' contemplated therein is referable to contract other than engagement as casual labour on daily wages. Any other view would reduce the contents of the main part of S. 2(00) to such a state of shrinkage which the legislature would not have contemplated (Para 22, 23, 26). But in the present case, the status of the workman is temporary Khas Khas Waterman contractually appointed at Rs. 116.14 per month plus D.A. and House Allowance on the specific terms and condition as stipulated in his appointment letters (Ext. W-1 series) indisputable.

11. With reference to (1996) 5 SCC 419 (DB), Central Bank of India-Vrs- S. Satyanand, others based on the leading case of Punjab Land Development and Reclamation Corpn. Ltd -Vrs- Presiding Officer, Labour Court (1990) 3 SCC 682 (CB) : 1991 SCC (L&S) 71, the stressful plea of Mr. Jha, the Learned Advocates for the workman, is that Chapter V-A in which Sec. 25-H (Re-employment of retrenched workman occurs provides for retrenchment and is not enacted only for the benefits of the workman to whom Sec. 25F (conditions precedent to retrenchment of workman) applies, but for all cases of retrenchment, and therefor, there is no reason to restriction of Sec. 25 H therein only to one category of retrenched workman (para 6, 10 and 11). In the aforesaid leading case (1990) 3 SCC 682 (CB), it has been held by the Hon'ble Apex Court in reference to Sec. 2(00) of the I.D. Act that 'Retrenchment' means termination of service of a workman by employer for any reason whatsoever except those expressly excluded in the section, the wider literal meaning is preferable to the natural, contextual, and narrow meaning viz. discharge of surplus-Definition clause is subject to "anything repugnant in the subject or context" and should be harmoniously read with sections 25-F, 25-G and 25-H to avoid any incongruity. Even the wider literal interpretation may result in affecting employers' right under standing orders or under contract of employment in respect of termination of service, that would be justified by reasons of social policy involved in Sec2(00) read with Sec.25F of imposing on them in addition social obligations-Seeing gaps, if any, Sunder Money decision preferring the literal meaning affirmed and held not per incuriam.

12. On the other hand Mr. K.N. Gupta, the learned Advocate for the Management citing the case of M.D. Harnataka Handloom Dev. Corp. Ltd. Vs. Sri Mahadev Laxman Raval, Civil Appeal No. 3251/2005 decided on 16-11-2006 equivalent citation AIR 2007 SC 631, concerning the I.D. Act, 1947-Sec.2, 10(1), 25B and 25F; Constitution of India-Art. 14, submits that 'Respondent was employed on contract basis under a scheme as weaving trainer, as he was not re-appointed on expiry of Contract, he raised an

industrial dispute-Referenced was allowed by Labour Court ordering reinstatement which was upheld by single Judge and Division Bench of the High Court-Hence, present Appeal Held that Respondent claimant was aware that his appointment was purely contractual and for a specified period and was not eligible to any other benefits as a regular employee of corporation and could be liable for termination without any notice and without payment of compensation, case of the claimant did not become an industrial dispute-Termination of his contract did not amount to retrenchment; therefore, it did not attract compliance of Section 25F, and the Appeal was allowed.

13. Further the contention of Mr. Gupta, the Learned Counsel for the Management, is that so far the regularisation/employment of the other workmen Rabintra Kumar, Jai Prakash Jha and others concerned is concerned, they were selected for their employment as per the Rules of the Management's circulars (Extt. M series), but the workman since failed to fulfil this requisite qualification were passing 8th class thereunder at the relevant time, so is not entitled to re-employment, as "when a person enters a temporary employment or gets engagement on a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature, such a person cannot invoke the theory of legitimate expectation for being confirmed on the post when an appointment to the post could be made only by following a procedure for selection....." as held by the Hon'ble Apex Court (Constitutional Bench) in the case of Secretary, state of Karnataka and ors.-vrs-Umadevi (3) and Ors, 2006 SCC (L&S) 753. Page 47.

14. With serene look at the materials available on the case records as well as and after deep study of all these aforesaid rulings as cited along with the submissions of both the Learned Counsels for the respective parties in the back drop of the case I find that the workman as temporary Khas Khas Waterman worked for 67, 85, 79 and 46 days in the year 1972, 1973 1974 and 1975 with breaks in the service by virtue of his temporary appointment letters (Extt.W-1 series); being 7th class pass, he was not qualified for filling up the criteria as per the management's circular Ext.M series for permanent appointment against the vacancies concerned, so he was not entitled to re-employment against the permanent vacancy concerned and accordingly the argument of Mr. K.N. Gupta, the Ld. Counsel for the management appears to be more consistent and plausible than that of Mr. D.K. Jha, the Ld. Advocate for the workman, for I am also tempted to quote the ratio decidendi fixed by the Hon'ble Apex Court (Constitution Bench) in the leading case as also cited in behalf of the management-2006 SCC (L&S) 753 (CB), therein it has been nicely held as under :

"though regular appointment as per the constitutional scheme for public employment must be the rule, there is nothing in the constitutional

scheme which prohibits the Union or the State Government or their instrumentalities from engaging persons temporarily or on daily wages inspite of the constitutional scheme governing public employment, without following the required procedure, to meet the needs of the situation—However, consistent with the scheme for public employment, unless the employment is in the term of relevant rules and after a proper competition amongst qualified persons, the same would not confer any right on the appointee—Therefore, a contractual appointment comes to an end at the end of the contract, an appointment on daily wages or casual basis comes to an end when it is discontinued, and a temporary appointment comes to an end on the expiry of its term; no employees so appointed can claim to be made permanent on the expiry of their appointment; for when regular vacancies in posts are to be filled up, a regular process of recruitment or appointment has to be resorted to as per the constitutional scheme, and cannot be done in haphazard manner based on patronage or other consideration concerning casual labourer or the temporary employee—paras 3, 4, 12 and 43.”

In the instant case I find the workman wants his re-employment dehors the procedure for permanent employment as per the rules.

15. Under these circumstances, I hold that since the workman is not entitled to re-employment as claimed, the action of the management of the State Bank of India Patna is rightly justified in not considering the workman Shri Laxman Tewary for his employment while making the appointment of fresh hands Shri Ravindra Kumar, Sujit Kumar, Mahendra Rai, Bindeshwar Paswan, Jai Prakash Ojha in the year 1993-1997 and Shri Gauri Shankar Singh and others as specified in the schedule as also justified. Thus the workman is not entitled to any relief at all.

KISHORI RAM, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2011

का.आ. 3250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोर्ट के पंचाट (संदर्भ संख्या 20/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2011 को प्राप्त हुआ था।

[सं. एल-41012/57/2001-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 19th October, 2011

S.O. 3250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2001) of the Central Government Industrial Tribunal-cum-Labour Court-No. II,

Kota as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway and their workmen, which was received by the Central Government on 12-10-2011.

[No. L-41012/57/2001-IR (B-I)]

RAMESH SINGH, Desk Officer

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राज./

पीठासीन अधिकारी - श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक: ओ. न्या./केन्द्रीय/20/2001

दिनांक स्थापित : 3/8/2001

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश संख्या एल-41012/57/2001(आईआर)(बी-1) दिनांक 24-7-01

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

सुभाष बाबू पुत्र श्री मुन्ना लाल

निवासी डडवाड़ा, कोटा जंक्शन

...प्रार्थी श्रमिक

एवं

डिविजनल रेलवे मैनेजर, वेस्टर्न रेलवे, कोटा जंक्शन/राजस्थान

...अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि - श्री अरूण शर्मा

अप्रार्थी नियोजक की ओर से प्रतिनिधि - श्री श्याम गुप्ता

अधिनिर्णय दिनांक : 4/8/2011

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपने उक्त प्रासंगिक आदेश दिनांक 24/7/01 के जरिये निम्न निर्देश/विवाद औद्योगिक विवाद अधिनियम, 1947 जिसे तदुपरान्त “अधिनियम” से सम्बोधित किया जायेगा की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :-

“Whether that action of the Railway Administration, Western Railway, Kota not taking Shri Subhash Babu S/o Shri Munnalal on duty after 5-5-74 alongwith other striking employee is justified? If not, what relief Shri Subhash Babu is entitled?”

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना विधिवत जारी कर अवगत करवाया गया।

3. प्रार्थी श्रमिक की ओर से अपना क्लेम स्टेटमेंट पेश किया गया जिसमें यह वर्णित किया गया कि प्रार्थी का पश्चिम रेलवे, कोटा

जंक्शन, लोको फोरमैन में खल्लासी के पद पर दिनांक 25-10-73 से नौकरी पर लगाया गया। प्रार्थी ने लगातार 4-5-74 तक नौकरी की। उसने अपना कार्य पूर्ण निष्ठा से किया एवं 5-5-74 को रेलवे की आम हड़ताल हो गयी एवं हड़तालियों ने प्रार्थी को नौकरी पर नहीं आने दिया एवं अपरिहार्य स्थिति पैदा कर दी इस कारण प्रार्थी ड्यूटी पर उपस्थित नहीं हो सका। हड़ताल समाप्त होने पर वह अपनी नौकरी पर उपस्थित हुआ तो लोका फोरमैन, कोटा जंक्शन ने उसे नौकरी पर नहीं लिया। इसके बाद प्रार्थी ने सहायक यांत्रिक अभियन्ता (स्थापना) के यहां लोको फोरमैन द्वारा नौकरी दिये जाने हेतु 10-6-74 व 10-11-74 को आवेदन किया, किन्तु उसके नौकरी नहीं दी गयी। इसके बाद 19-11-90 को उसने जनरल मैनेजर, मुम्बई के यहां 1-9-94 को नौकरी हेतु आवेदन किया, किन्तु उसे नौकरी नहीं दी गयी। प्रार्थी ने रेल मंत्री आदि को रिमाइन्डर भी दिये किन्तु उसे नौकरी नहीं दी गयी, जबकि रेल मंत्रालय ने अपने परिपत्र क्रमांक ई(एसआर)1177 एस.पी. 2-17 दि. 6-4-77 के द्वारा परिपत्र के पैरा सं. 6 में स्पष्ट किया कि जो भी कैजुअल लेबर हड़ताली नौकरी से हटा दिये गये हैं उन्हें वापस नौकरी पर उसी स्केल व पद पर ले लिया जाये व पुरानी वरिष्ठता देकर उसी यूनिट में रखा जाये। बाद में सांसद बासुदेव आचार्य के मार्फत प्रार्थी ने रेल मंत्री को पत्र लिखवाया जिसका रेल मंत्री ने दि. 28-5-97 को उत्तर दिया कि कैजुअल रेकार्ड में लोको फोरमैन के हस्ताक्षर मेल नहीं खाते, अतः प्रार्थी को नौकरी नहीं दी। जबकि प्रार्थी ने 120 दिन से ज्यादा लगातार नौकरी की जिससे प्रार्थी को नियमानुसार टेम्पेरी स्टेटस दिया जाना था, वह भी नहीं दिया गया, जबकि प्रार्थी के साथी श्रमिक जगदीश, रामजीलाल, भंवरलाल व रमेशचन्द्र को हड़ताल के बाद में नौकरी पर ले लिया गया और वे आज भी नौकरी पर हैं। अतः प्रार्थी ने अपने क्लेम स्टेटमेंट में पूर्व की सेवा अवधि की निरन्तरता के साथ पुनः नौकरी में लिये जाने व बकाया समस्त घेतन व अन्य परिलाभ दिये जाने का निवेदन किया है।

4. अप्रार्थी रेलवे की ओर से इसका जवाब पेश किया गया। अपने जवाब में अप्रार्थी ने क्लेम में वर्णित तथ्यों को अस्वीकार किया व यह कथन किया कि प्रार्थी ने 25-10-73 से अप्रार्थी के यहाँ काम किया वह तथ्य स्वीकार है। प्रार्थी से 8-4-74 तक ही काम लिया गया, 4-5-74 तक काम लिया जाना अस्वीकार है। प्रार्थी को हड़तालियों द्वारा नौकरी पर नहीं आने देने का तथ्य स्वीकार नहीं है। प्रार्थी को लेटर देना व कार्ड देना, यह तथ्य भी स्वीकार नहीं है। रेलवे ने जो परिपत्र जारी किया, उस बाबत तो स्थिति निर्विवादित है, किन्तु प्रार्थी 8-4-74 के बाद अपनी इच्छा से कार्य पर उपस्थित नहीं हुआ, अतः प्रार्थी को रेलवे द्वारा जारी परिपत्र का लाभ इन परिस्थितियों में नहीं दिया जा सकता। प्रार्थी द्वारा जो रिकार्ड पेश किया गया वह भी विभागीय रिकार्ड प्रतीत नहीं होता एवं संदिग्ध है। प्रार्थी का 120 दिन तक लगातार कार्य किया जाना अस्वीकार है, यदि अन्य व्यक्तियों को सेवा में रखा गया तो उनके मामले प्रार्थी से भिन्न है। प्रार्थी द्वारा प्रस्तुत किया गया रिकार्ड संदिग्ध है जिसकी जाँच किया जाना आवश्यक है। क्लेम प्रार्थना-पत्र में इस न्यायालय को श्रवणाधिकार नहीं है। अतः अप्रार्थी ने अपने जवाब के माध्यम से प्रार्थी का क्लेम स्टेटमेंट खारिज किये जाने की प्रार्थना की है।

5. इसके पश्चात् साक्ष्य प्रार्थी में डबल्यू.डबल्यू. सुभाष बाबू डबल्यू.डबल्यू.2 इन्द्रकुमार तिवारी व डबल्यू.डबल्यू.3 कोशल किशोर पाण्डे के शपथ-पत्र पेश कर जिरह करवायी गयी व प्रलेखीय साक्ष्य में प्रदर्श डबल्यू.1 लगायत डबल्यू.8 तक के कागजात प्रदर्शित करवाये गये। इसके पश्चात् साक्ष्य अप्रार्थी में एम.डबल्यू. अश्वनी डी.शर्मा का शपथ-पत्र प्रस्तुत कर जिरह करवायी गयी।

6. पक्षकारों की साक्ष्य समाप्ति के पश्चात बहस अन्तिम सुनी गयी, पत्रावली का अवलोकन किया गया। विचारणीय बिन्दु हमारे समक्ष यही है कि प्रार्थी निर्देश में वर्णित कोई अनुतोष प्राप्त करने का अधिकारी है या नहीं।

7. बहस के दौरान प्रार्थी श्रमिक की ओर से दलील दी गयी कि भारत सरकार के आदेश दि. 6-4-77 प्रदर्श डबल्यू.7 की पालना अप्रार्थी ने नहीं की है, जबकि इस परिपत्र/आदेश में यह स्पष्ट किया गया है कि सभी प्रकार के कर्मचारी चाहे स्थायी, अर्द्धस्थायी या अस्थायी जिनको कि सेवा से हटा दिया गया या निलम्बित कर दिया गया, उन्हें पुनः सेवा में बिना हड़ताल आदि का व्यवधान मानते हुए लिया जायेगा एवं इसी परिपत्र के चरण सं. 6 में यह भी वर्णित किया गया कि स्थानापन्न, बदली या आकस्मिक श्रमिक जिनकी सेवायें हड़ताल के कारण समाप्त कर दी गयी थी, उन्हें पुनः सेवा में लिया जाये एवं वे सभी पुरानी सेवा की वरिष्ठता के साथ बहाल होंगे एवं वे पुनः नये कार्य कर लगने की तिथि से ही मजदूरी प्राप्त करने के अधिकारी होंगे। अतः इस परिपत्र की भावना एवं निर्देश को अप्रार्थी ने नजर अन्दाज कर दिया है, प्रार्थी को ड्यूटी पर नहीं लिया है, अतः इस परिपत्र की पालना करना लाजिमी है। रेलवे के नियमों में 120 दिन लगातार काम करने पर वह अर्द्धस्थायी घोषित होने का अधिकार होता है, जबकि प्रार्थी ने 190 दिन तक काम किया है। प्रार्थी द्वारा प्रस्तुत दस्तावेजात की प्रविष्टियाँ फ्रजी हो, ऐसी कोई जाँच अप्रार्थी ने नहीं की है व ना ही इसका कोई खण्डन किया है। प्रार्थी के साथ कार्यरत अन्य श्रमिकों को नौकरी पर ले लिया गया है, प्रार्थी को भी पुनः सेवा में लिया जाना अति आवश्यक है। प्रार्थी ने अपना मामला साक्ष्य से साबित कर दिया है, गवाहों ने भी क्लेम स्टेटमेंट में वर्णितानुसार ही कथन किये हैं, अतः प्रार्थी को समस्त पिछले परिलाभों सहित मूल पद पर बहाल किये जाने का अधिनियम पारित किया जाये। इस सम्बन्ध में प्रार्थी की ओर से "नरसिंह पाल बनाम यूनियन आफ इण्डिया (2000)3 एस. सी.सी.588" के न्यायनिर्णय को उद्धृत किया गया जिसमें यह प्रतिपादित किया गया कि जहा आकस्मिक श्रमिक अस्थायी दर्जा प्राप्त कर लेता है तो उसे भी सविधान के अनुच्छेद 311 के तहत संरक्षण प्रदान किया जाना चाहिए। एक और न्यायनिर्णय "भोगपुर को-ओपरेटिव शुगर मिल्स लि. बनाम हरमेश कुमार-2006 (III) एफएलआर 1202(एस.सी.) को उद्धृत किया गया। इस मामले में औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ, जी के प्रावधान कहीं लागू हैं तथा बाद आये पहले जाये सिद्धांत के बाबत भी विवेचन किया गया है एक ओर न्यायनिर्णय "मैनेजर मै. मित्तल स्टील मैनुफैक्चरिंग कंपनी बनाम छोटाराम-आर. एल. आर. 2005(3) पृष्ठ 63" को उद्धृत किया गया। इस मामले में प्रबन्धक द्वारा भुगतान पंजिका तथा उपस्थिति पंजिका पेश नहीं करने

पर किस प्रकार से विपरीत उपधारणा बनायी जायेगी, इस बाबत स्थिति विवेचित की गयी। -

8. इसके विपरीत अप्रार्थी की ओर से दलील दी गयी कि प्रार्थी द्वारा 25-10-73 से 3-4-74 तक ही अप्रार्थी के यहाँ काम किया गया, उसके बाद 4-4-74 से अप्रार्थी के यहाँ काम ही नहीं किया। प्रार्थी द्वारा प्रस्तुत कार्ड प्रदर्श डबल्यू 1 बनावटी है। प्रार्थी ने कभी 240 दिन लगातार काम नहीं किया। चूँकि प्रार्थी ने नियमानुसार विहित अवधि तक कार्य नहीं किया, अतः उसे अर्द्धस्थायी की श्रेणी भी नहीं दी जा सकती। प्रार्थी ने काफी लम्बे समय बाद मामला उठाया है, अतः उन्होंने प्रार्थी को कोई अनुसूच प्राप्त करने का हकदार नहीं होने की दलील देते हुए इसी अनुरूप निर्देश निस्तारित किये जाने की प्रार्थना की है।

9. हमने उभयपक्ष द्वारा दी गयी दलीलों व उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया। पत्रावली पर आयी हुई साक्ष्य व सामग्री का भी परीक्षण किया।

10. अब जहाँ तक प्रार्थी द्वारा अप्रार्थी के यहाँ कार्य किये जाने का सवाल है, प्रार्थी ने अपने ब्लेस स्टेटमेंट में 25-10-73 से 4-5-74 तक कार्य करना बताया है। अपने शपथ-पत्र में भी उसने यही कथन किया है। इसके विपरीत अप्रार्थी के गवाह एम. डबल्यू 1 अश्वनी शर्मा ने प्रार्थी का 25-10-73 से 8-4-74 तक लोको फोरमैन पश्चिम रेलवे, कोटा में कार्यरत होना बताया अर्थात् उभयपक्ष की साक्ष्य में बिरोधाभास की स्थिति जो हो रही है वह 8-4-74 से 4-5-74 तक ही हो रही है। करीबन 25-26 दिन की सेवा अवधि रेलवे द्वारा कम बतायी जा रही है, अन्यथा 25-10-73 से 8-4-74 तक की सेवा अवधि में तो अप्रार्थी के गवाह ने प्रार्थी का रेलवे में कार्यरत होने का तथ्य स्वीकार कर लिया। प्रार्थी ने अपने ब्लेस प्रार्थना-पत्र एवं शपथ-पत्र में 'खल्लासी' के पद पर लोको फोरमैन के यहाँ कार्यरत करना बताया। प्रार्थी ने ब्लेस प्रार्थना-पत्र में यह भी वर्णित किया कि 5-5-74 से रेलवे में हड़ताल होने से वह नौकरी पर नहीं जा पाया। अप्रार्थी की ओर से प्रार्थी द्वारा भारत सरकार के परिपत्र दि. 6-4-77 को स्वीकार कर लिया गया। इस परिपत्र के बिन्दु सं. 6 में स्थापना एवं आकस्मिक श्रमिकों को जिनकी की सेवा में हड़ताल के कारण समाप्त कर दी गयी थी, उन्हें भी पुनः सेवा में लिये जाने के निर्देश दिये गये, परन्तु वेतन सेवा में वापस लिये जाने की तिथि से ही दिये जाने का निर्देश है। प्रार्थी के अन्य गवाह इन्द्रकुमार व कौशलकिशोर, दोनों ने अपने शपथ-पत्र में प्रार्थी का 25-10-73 से 4-5-74 तक कार्य करना बताया है। प्रार्थी की ओर से प्रथम नियुक्ति सम्बन्धी जोब कार्ड व पहचान-पत्र प्रदर्श डबल्यू 1 डबल्यू 2 प्रदर्शित करवाये गये। इन कामजात का अवलोकन किया गया। उक्त प्रदर्श डबल्यू 1 दिनांक 7-7-87 को जारी किया गया एवं इसमें नौकरी की अवधि 25-10-73 से 3-4-74 तक ही बतायी गयी। जहाँ कोई दस्तावेज निर्दिष्ट नहीं है तो मौखिक साक्ष्य के मुकाबले उस दस्तावेज साक्ष्य को ज्यादा प्राथमिकता दी जायेगी। इस दस्तावेज प्रदर्श डबल्यू 1 से ही यह स्पष्ट ज्ञात हो जाता है कि प्रार्थी द्वारा 25-10-73 से 3-4-74 तक ही नौकरी की गयी। क्योंकि नियमित उसके द्वारा 4-5-74 तक नौकरी की गयी होती तो इसका इन्तज सेवा

रिकार्ड प्रदर्श डबल्यू 1 में होता। अतः प्रार्थी द्वारा 4-5-74 तक सेवा किये जाने का खण्डन स्वयं इस प्रदर्श डबल्यू 1 से हो जाता है।

11. प्रार्थी की प्रथम नियुक्ति के समय सेवा जॉब-कार्ड प्रदर्श डबल्यू 1 में ना तो उसकी जन्मतिथि अंकित है एवं ना ही उसकी प्रारम्भिक नौकरी के समय कितनी आयु थी, ऐसा कोई उल्लेख है एवं ना ही उसकी कोई शैक्षणिक योग्यता उल्लेखित की गयी अर्थात् कॉलम नं. 3, 4 व 5 में इन तथ्यों बाबत कोई विवरण नहीं भरा गया। जबकि किसी भी सेवा में प्रविष्ट होने से पूर्व किसी भी कर्मचारी की जन्मतिथि, आयु व शैक्षणिक योग्यता पहले भरी जाती है, उसी के आधार पर यह तय किया जाता है कि श्रमिक या कर्मचारी सेवा में लिये जाने या नियुक्त किये जाने की पात्रता रखता है या नहीं। अतः ऐसी परिस्थिति में इन कॉलम्स को खाली छोड़ देना इस जॉब-कार्ड की प्रमाणिकता पर प्रश्नचिन्ह पैदा करता है।

12. प्रार्थी ने अपने आपको नौकरी पर लिये जाने बाबत 10-6-74 व 10-11-74 देने प्रार्थना-पत्र प्रदर्श डबल्यू 3 व डबल्यू 4 के रूप में प्रदर्शित करवाया है। दोनों ही प्रार्थना-पत्र सहायक यांत्रिक अभियंता (स्थापना) कोटा को संबोधित किये हुए हैं एवं प्राप्त करने वाला लोको फोरमैन है। अतः जिस अधिकारी को सम्बोधित किया गया है, उसको ना देकर के अन्य अधिकारी या कर्मचारी को दिये जाने का क्या औचित्य था? क्या वह अधिकारी सहायक अभियंता की ओर से ऐसे प्रार्थना-पत्र लेने के लिए अधिकृत था या नहीं, यह भी कहीं प्रकट नहीं होता है। इस मामले में प्रार्थी के गवाह डबल्यू 1 डबल्यू 2 इन्द्रकुमार व डबल्यू 3 डबल्यू 4 कौशलकिशोर ने अपने शपथ-पत्रों में कथन किया कि जो हस्ताक्षर लोको फोरमैन की मोहर के ऊपर सुखलाल आर्य व आर. शर्मा के हैं, वे उन्हीं के हैं। चूँकि मूल दस्तावेज तो पेश नहीं हुए हैं एवं फोटोकॉपी प्रदर्शित करवायी गयी है तो हस्ताक्षर जिन व्यक्ति के बताये जा रहे हैं, उसके सम्बन्ध में साक्ष्य का नियम यह है कि जिस व्यक्ति के हस्ताक्षर हो, सर्वप्रथम तो उसे ही पेश कर उसे साबित करवाया जाना चाहिए। यदि उस व्यक्ति की मृत्यु हो चुकी है या वह साक्ष्य देने में असमर्थ हो चुका है या वह न्यायालय की पहुँच सीमा से बाहर है तो ऐसे मामलों में अन्य प्रकार से जिस बाबत साक्ष्य विधि में वर्णित किया गया है, उस तरीके से हस्ताक्षर प्रमाणित कराये जाने चाहिए। फोटोकॉपी पर हस्ताक्षर उसी व्यक्ति के हैं, यह प्रमाणित कराये जाने का नियम ना तो साक्ष्य विधि में है एवं ना ही फोटोकॉपी पर हस्ताक्षर होने के तथ्य को कोई मान्यता दी जा सकती है। अतः हस्तगत मामले में भी जिन व्यक्तियों के हस्ताक्षर हैं, उनकी साक्ष्य में परीक्षित नहीं कराकर अन्य गवाहों से फोटोकॉपी पर सुखलाल आर्य व आर. शर्मा के हस्ताक्षर साबित नहीं माने जा सकते हैं।

13. मामले में प्रार्थी की ओर से इस श्रम विवाद को वर्ष 2007 में अपने प्रार्थना-पत्र 21-7-2000 के द्वारा उठाया गया है, ऐसा प्रदर्श डबल्यू 16 से ज्ञात होता है। घटना वर्ष 74 की है, अतः करीबन 26 वर्ष बाद प्रार्थी द्वारा इस प्रकार से विवाद उठाने से यह प्रकट होता है कि प्रार्थी पूर्व में अपने मामले को प्रति गम्भीर नहीं था। कई बार असह्य रिजर्व्ड जेनरल वेतन भोगी कर्मचारियों के होते हैं, उसे ज्यादा लम्बे अवधि तक सुस्त नहीं रखना होता है या नष्ट कर दिया

जाता है तो ऐसी परिस्थिति में जबकि ना तो इस रिकार्ड की कोई प्रमाणित प्रतिलिपि पेश हुई है एवं ना ही ऐसा रिकार्ड जो प्रार्थी की ओर से पेश किया गया है, उस बाबत विभाग के किसी अधिकारी ने पुष्टि की है तो फिर ऐसे अभिलेख को एक मात्र विश्वसनीयता या प्रमाणिकता का दर्ज नहीं दिया जा सकता है। रेलवे के गवाह ने प्रदर्श डब्ल्यू 1 के सेवा रिकार्ड को संधिध होना बताया है एवं अप्रार्थी रेलवे द्वारा ऐसा कोई कार्ड जारी किया जाना भी प्रतीत नहीं होना बताया। अब जब इस कार्ड के सम्बन्ध में रेलवे द्वारा खण्डन किया जा रहा है तो प्रार्थी पर खण्डन प्रमाणिकता का बोझ है जो उसे खर्च करने से सहाय्य करवाये, परन्तु ऐसा नहीं किया जा रहा है एवं प्रमाणिकता के मामले में ऊपर विवेचन किया जा चुका है कि प्रमाणिकता की जो बख्ती किसी गवाह के द्वारा की जा सकती है, उसे सति करने के लिये हो, उसका इस मामले में अभाव है। अतः ऐसे बख्तावेज को एक मात्र विश्वसनीय मान लेना किसी भी रूप में सुचित नहीं है। इसके समर्थन में प्रार्थी के आकस्मिक रिकार्ड से सम्बन्ध में स्वयं प्रार्थी ने क्लेम स्टेटमेंट के चरण सं. 6 में यह वर्णित किया है कि रेल मंत्री ने दिनांक 28-5-97 को यह आदेश दिया कि कौजुअल रिकार्ड में लोको फोरमैन के हस्ताक्षर जेल नहीं आते हैं। अतः इससे भी यही स्थिति प्रकट होती है कि बख्तावेज प्रमाणिकता लिये हुए नहीं होकर सन्देह के घेरे में है।

14. प्रार्थी की ओर से यह भी दहील दी गयी कि प्रार्थी ने लगातार काम किया, अतः उसे आदेशवासी अधिकार का दर्जा दिया जाना चाहिए था, परन्तु यह किस नियम के तहत दिया जाना चाहिए था, ऐसा कोई नियम प्रार्थी की ओर से उभृत नहीं किया गया। अन्यथा औद्योगिक वि. अधिनियम की धारा 25-ख में निम्नलिखित की जो परिभाषा दी गयी है, उसमें किताब एक कलैण्डर वर्ष में दोबारा या दुर्जनना, तालाबन्दी आदि को सम्मिलित कर उसने 240 दिन तक लगातार कार्य किया हो या कर्मकार खान या भूमि के नीचे नियोजित था तो उसने 190 दिन कार्य किया हो। हस्तगत मामले में प्रार्थी कर्मकार खान या भूमि के नीचे कार्यरत नहीं था, अतः कलैण्डर वर्ष 1973 में 240 दिन का कार्यदिवस नहीं हो रहा है व इसी प्रकार कलैण्डर वर्ष 1974 में भी 240 दिन कार्यदिवस नहीं हो रहा है। दोनों कलैण्डर वर्ष की अवधि को मिला दिया जाके तो भी 240 दिन का लगातार प्रार्थी का कार्य किया जाना साबित नहीं होता है। अतः ऐसी परिस्थिति में प्रार्थी का 240 दिन लगातार कार्य किये जाने का तथ्य भी साबित नहीं माना जा सकता है।

15. मामले में प्रार्थी की ओर से जो न्यायविषय उभृत किये गये हैं, उनमें प्रबन्धक मै. विक्टर स्टील मैनुफैक्चरिंग कंपनी के मामले में जो विपरीत उपधारणा निकाले जाने का सिद्धांत प्रतिपादित किया गया है, वह इस मामले में बाधक स्थिति नहीं होता है क्योंकि सर्वप्रथम तो प्रार्थी द्वारा जो दस्तावेज पेश किये गये हैं, उस बाबत स्थिति ऊपर विवेचित की गयी है कि वे बख्तावेज हैं। दूसरे, प्रार्थी वास्तव में यदि अप्रार्थी द्वारा उसे सेवा में नहीं लिया जा रहा था तो तत्काल अपना मामला श्रम मंत्रालय के माध्यम से अग्रिम प्रेषित कर सकता था। तद्विषय 26 वर्ष की अवधि में प्रार्थी ने मामले में निर्देश करवाया, जब तक कि वैयक्तिक तैयारी भोगी कर्मचारियों को रिकार्ड भी उपलब्ध

नहीं होने से अप्रार्थी द्वारा पेश नहीं किये जाने से इस न्यायाधिकरण की राय में अब विपरीत उपधारणा बनाये जाने का भी कोई औचित्य प्रतीत नहीं होता है। इसके अलावा विधि का यह सर्वमान्य सिद्धांत है कि कानून उन लोगों की मदद करता है जो अपने अधिकारों के प्रति जागरूक रहते हैं, ना कि उनकी, जोकि अपने अधिकारों के प्रति आँख मूंद कर सोये रहते हैं। प्रार्थी ने अपने शपथ-पत्र के अन्त में यह भी कथन किया कि प्रार्थी को कोई रोजगार नहीं मिला, अभी भी बेरोजगार बना हुआ है। अब प्रार्थी को पेश किये गये 744 में दी जाने वाली धी तो कलैण्डर वर्ष के नाम सलाहकार के माध्यम से रेलवे के माध्यम से प्रेषित करवाता नहीं उठा सकता था? परन्तु प्रार्थी ने वर्ष 2000 में श्रम मंत्रालय के माध्यम से अपना मामला उठाया। अतः 26 वर्ष से यदि प्रार्थी वास्तव में बेरोजगारी से पीड़ित होता तो वह इतनी लम्बी अवधि तक इन्तजार नहीं कर सकता था।

16. इस प्रकार ऊपर दिये गये समस्त विवेचन के आधार पर इस न्यायाधिकरण की राय में प्रार्थी द्वारा अपने मामले के सम्बन्ध में जो दस्तावेजों का पेश किया गया है, वह विश्वसनीयता व प्रमाणिकता लिये हुए नहीं है, उस पर किसी भी रूप से विश्वास किया जाना सुचित नहीं है। प्रार्थी ने करीब 26 वर्ष बाद मामले को उठाया है, तब तक कोई रिकार्ड मिलना भी सम्भव नहीं हो पाता है। यदि प्रार्थी वास्तव में नौकरी नहीं दिये जाने से पीड़ित होता तो वह 26 वर्ष तक ऐसे बिना काम के उठाने का इन्तजार नहीं करता, अतः तत्काल अपने मामले को निमित्त करवाने के लिए निर्देशित करधाता या अप्रार्थी द्वारा रेल मंत्रालय के आदेश की पालना नहीं की जा रही थी तो वह अपने विधिक प्रतिनिधि या श्रम सलाहकार के माध्यम से रेलवे अधिकारियों को नोटिस दिलवाकर अग्रिम कार्यवाही करवा सकता था, परन्तु ऐसा भी प्रार्थी की ओर से नहीं किया गया। प्रार्थी की ओर से प्रस्तुत दस्तावेजों का पेश के सन्देह के घेरे में होने व दस्तावेजों व मौखिक साक्ष्य, दोनों से ही मामला किसी भी रूप से संतोषप्रद रूप से साबित नहीं होने से प्रार्थी किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है। अतः कुल-मिलकर सार रूप में इतना ही कहना पर्याप्त है कि प्रार्थी किसी प्रकार का अनुतोष प्राप्त करने का अधिकारी इस न्यायाधिकरण की राय में नहीं बनता है।

पश्चिमप्रवरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा सम्प्रेषित निर्देशाविवार सं. एल-41012/57/2001 दिनांक 14-7-01 को अधिनियमित कर इस प्रकार उचित किया जाता है कि प्रार्थी सुभाष बाबू अप्रार्थी डिवाजनल रेलवे मैनेजर, वेस्टर्न रेलवे, कोटा जंक्शन राजस्थान से किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

अधिनियम आज दिनांक 4-8-2011 को खुले न्यायाधिकरण में सुनवाई करके हस्ताक्षरित किया गया जिसे नियमानुसार समुचित सरकार को प्रकान्तार्थ भिजवाया जावे।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 20 अक्टूबर, 2011

अनुच्छेद 3251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डबल्यू. सी. एल.

के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 227/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-10-2011 को प्राप्त हुआ था।

[सं. एल-22012/290/2002-आई आर (सी एम-II)]

डी. एस. एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 20th October, 2011

S.O. 3251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 227/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Dhoptala Sub Area of Western Coalfields Limited, and their workman, received by the Central Government on 20-10-2011.

[No. L-22012/290/2002-IR (CM-II)]

D.S.S. SRINIVASA RAO, Under Secy.

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/227/2003

Date: 7-10-2011

Party No. 1 : The Sub Area Manager,
Dhoptala Sub Area of WCL,
Post Sasti, Tah, Rajura,
Distt. Chandrapur (M.S.)

Versus

Party No. 2 : Shri S.R. Pendre, General Secretary,
Lal Bavta Koyla Kamgar Union,
Biwapur, Ward No. 27,
Chandrapur, Post & Distt.
Chandrapur (M.S.)

AWARD

Dated : 7th October, 2011

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Dhoptala Sub Area of WCL and the claimants, Shri Ajay Wasudeo Waghmare, Shri Satish Umakant Naidoo, Shri Shalikrao Sadashiv Matte, and Shri Prashant Kaleshwar Pawar, for adjudication, as per letter, No. L-22012/290/2002-IR (CM-II) dated 13-10-2003, with the following schedule :—

"Whether the action of the Management in relation to Dhoptala Sub Area of WCL in terminating the services of Shri Ajay Wasudeo Waghmare,

Shri Satish Umakant Naidoo, Shri Shalikrao Sadashiv Matte, and Shri Prashant Kaleshwar Pawar, vide office order no. WCL/SAM/5/1050 dated 6-10-1998 is legal and justified? If not, to what relief the workmen are entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "Lal Bavta Koyla Kamgar Union" ("the Union" in short) filed the statement of claim on behalf of the claimants and the management of W.C.L. ("party no. 1" in short) filed the written statement,

The case of the claimants as projected in the statement of claim is that "Western Coalfields Limited" is a coal company and is controlled and managed by the Government of India and they were working under party no. 1 in permanent nature of job in Dhoptala underground mine as workmen since 4-6-1996 and their services were terminated by the party no. 1 on 6-10-1998 and their names were sponsored by the Employment Exchange, Chandrapur as apprentice for one year as per the provisions of Apprenticeship Act, 1961 and they joined as apprentice at Sasti Colliery underground mines of Dhoptala Sub Area, by office orders of WCL dated 23-7-1996 and 28-7-1996 and they completed the apprentice period of one year in July 1997, August 1997 and October 1997 and after completion of the apprentice period, by office order dated 24-7-1997, they were allowed to continue their duties till further notice and after such office order, they completed 190 days of attendance in one calendar year and from the month of February 1997, the party no. 1 also deducted C.M.P.F. contribution from their salary from February, 1997 to 6-10-1998 and therefore, the provisions of Section 25-B and 25-F of the Act are applicable to their case and they were entitled to receive wages of category II as per the NCWA V, but they were paid only Rs. 670 per month upto October 1998 by the party no. 1, which was an act of victimization and unfair labour practice. The further case of the claimants is that by order dated 6-10-1998 without any reason or charge sheet or departmental enquiry or show cause, the party no. 1 discontinued their services along with 38 other apprentice and some months thereafter, the party no. 1 by adopting illegal practice and discrimination, out of the 42 apprentices, employed P.M. Gandhe, R.S. Maskar, A.T. Sonalkar, J.G. Dhiraj, R.J. Bele, A.D. Yengurwar, D.T. Taksande, W.G. Gajapure, A.S. Aloni, R.M. Salewar, A.P. Chowdhary, S.N. Patole and B.P. Biswas having serial nos. 1, 2, 5, 10, 14, 17, 18, 21, 28, 34, 36, 38, 39, 40, 41 and 42 respectively in the seniority list, in different collieries and allowed them salary of category II and in view of their completion of 190 days of work from July 1997 to October 1998, they approached the party no. 1 repeatedly to allow them to join duty, but party no. 1 did not allow them to join and as such, on 30-10-2001, they raised the dispute before the ALC (Cetral), Chandrapur and as there was failure of conciliation, the A.L.C. (C) submitted the

failure report to the Central Government and the Central Government in its turn, referred the dispute for adjudication to the Tribunal.

It is also pleaded by the claimant that as they had already completed 190 days of attendance in under-ground, they were in continuous service, as per the provision of Section 25-B of the Act and therefore, for discontinuation of their services, retrenchment notice as per provisions of Section 25-F of the Act were necessary, but the party no. 1 discontinued their services without any notice as required under Section 25-F of the Act and as such, termination of their services is illegal and they are entitled for reinstatement in service with continuity and full back wages.

3. The party no. 1 in its written statement is pleaded inter-alia that the Central Government has erred in making the reference to the Tribunal for adjudication, as the claimants are not workmen or even casual workmen in terms of Section 2(s) of the Act and mentioning about "termination in the reference is also incorrect, as because termination of services of a person arises only when he is employed after appointment either temporarily or intermittently, whereas, in the present case there was no such appointment and as such, there was no termination as alleged and therefore, the reference is bad in law and void ab-initio and for that the reference is not maintainable. It is further pleaded by the party no. 1 that in view of the definition of "workman" given in Section 2 (s) of the Act, definition of "Apprentice" in Section 18 of the Apprenticeship Act, 1961 and the decision of the Hon'ble Apex Court in the case of UPSEB Vs. Shiv Mohan Singh (2005) (1) LLJ-117. Apprentices are not workmen and the provisions of the Act have no application to apprentices and as such, the reference made by the Central Government is without jurisdiction. The further case of the party no. 1 is that WCL is a registered company, under the Indian Companies Act and is a Government undertaking and subsidiary of Coal India Limited and it has a recruitment policy for appointment of employees and appointment in WCL is governed by certain statutory rules and regulation and a person seeking employment in WCL has to go through the entire procedure prescribed for employment and in accordance with the recruitment policy and direction of the Central Government, the employment in Class III and Class IV are made only by requisitioning list of required number of eligible candidates through Employment Exchange and it is when, no suitable candidates are available and a certificate is issued by the Employment Exchange in that respect, then only, the other source of recruitment are to be considered and it being a public sector undertaking is required to give training to a large number of apprentices and the mere fact of the apprentices undergoing apprentice training does not vest any right on them to secure employment on permanent basis and the four applicants were admitted as apprentices under the Apprenticeship Act, 1961, in Ballarpur Area and they were amongst 49 apprentices admitted in different units of Ballarpur Area between December, 1995 to October,

1996 and they were given offer of admission of apprentices vide letter dated 4-6-1996 and the said offer letter itself, it was specifically stated that the training period would be for one year duration and they would be posted in any underground mines of Ballarpur Area for misc. jobs and they would have to fill up the contract of Apprenticeship Act, 1961, which only would validate their appointment and in view of such offer letter, the claimants executed a contract and consequent upon the execution of the apprenticeship agreement, vide order dated 30-7-1996, the four claimants along with other were appointed as apprentices and posted at Sasti Colliery w.e.f. 24-7-1996 for a period of one year and on 26-7-1998, a written test was held by the management for the apprentices, who had completed one year of apprenticeship and 127 apprentices including the claimants appeared in the written test and out of them, only 84 candidates were successful and the claimants failed in the said test and a panel of successful candidates was drawn up and on that basis, appointment orders were issued as per the vacancies, which arose from time to time and the candidates, who were successful in the examination were given offer of appointment in order of merit, irrespective of their seniority as apprentices and the candidates, who had failed in the said examination were given another opportunity to appear in the examination, which was held on 20-4-2000 and 41 candidates including the four claimants had appeared in the said examination but the claimants again failed in the examination and after completion of apprenticeship period of one year, the claimants were permitted to continue as apprentices till further notice, by order no. 2249 dated 24-7-1997 and as the claimants were failed twice in the examination, they cannot have any claim over the candidates, who were successful in the examination and as such, vide order no. 1050 dated 6-10-1998, the claimants and other unsuccessful candidates were discontinued and several unions had raised industrial dispute for absorption of all the apprentices vide notice dated 7-11-1998 and as conciliation proceeding failed, the ALC (C), Chandrapur had made a failure report to the Central Government on 3-12-1998, but the Central Government by order dated 18/20-10-1999 had refused to make the reference of the dispute and as such, the unions filed writ petition no. 3520 of 2001 before the Hon'ble High Court of Judicature Bombay, Bench at Nagpur and the Hon'ble High Court vide order dated 11-9-2002 dismissed the said petition and the Hon'ble High Court at Bombay, Nagpur Bench in Writ Petition no. 425/03 (Mahadeo Dilip Sone Vs. The Chief Managing Director, WCL) vide order dated 29-3-2004 hence held that, "The mere completion of apprenticeship training does not confer any vested right in the apprentices to the regular appointment and as such, the reference is to be answered in its favour. It is also pleaded that the claimants were never employed or appointed by the management and they were selected as apprentices under the Apprenticeship Act, 1961 and they were not the coal mine employees to attract the provisions of NCWA and they

were entitled to stipend under the apprenticeship contract, which was paid to them and issue of charge sheet, conducting departmental enquiry or issue of show-cause notice are necessary, where the services of workman are required to be terminated by way of initiating disciplinary action and in this case, the apprenticeship training of the claimants was discontinued on completion of their training and the claimants are not entitled for any relief.

4. In support of their respective claims, parties have adduced oral evidence, besides placing reliance on documentary evidence. From the side of the claimants, claimants Ajay Waghmare, Salikrao Sadashiv Matte and Satish Naidoo were examined as witnesses. One Ramesh Hanumantrao Dingalwar was examined as a witness on behalf of the party no. 1.

The three claimants, in their examination-in-chief which is on affidavits have reiterated the facts mentioned in the statement of claim. In their cross-examination, all the three of them have admitted that they were getting a stipend of Rs. 580 per month during the period of their apprenticeship. They also admitted that they were also getting the stipend of Rs. 580 per month during the extended period, after completion of the apprenticeship.

5. The evidence of the witness examined on behalf of the party no. 1 is also in the same line, which has been taken by the party no. 1 in the written statement. Though this witness has been cross-examined at length nothing of substance was brought out in the cross-examination to disbelieve him.

6. At the time of argument, it was submitted by the learned advocate for the claimants that after completion of apprenticeship on 24-7-1997, the claimants were appointed in regular duty vide office order dated 24-7-1997 and a bare perusal of the said order, it can be found that there was no extension of apprentice period and the claimants were absorbed on regular duty on completion of their apprenticeship and they continued to perform the duty of category II workman till 6-10-1998 and management has not come up with any case that the apprenticeship period was extended beyond the schedule one year term and subscription for EPF was deducted from the month of February, 1997 and from the above facts, it is clear that the regular services of the claimants were terminated vide order dated 6-10-1998, without giving any prior notice and to escape their liability, the management have tried to canvass that the claimants are not covered under the definition of workman, but the standing orders of WCL clearly postulates that an apprentice comes within the classification of workman in tune with the definition given under Section 2(s) of the Act and as the claimants had completed more than 190 days of duty in a period of 12 consecutive months in underground mine, they enjoyed the protection under Section 25-F of the Act and therefore the termination of their services was wholly illegal and

unsustainable in law and the plea of the management that the claimants were not successful in written test conducted by the management is wholly afterthought and is a ploy to deny the legitimate claim of the claimants.

7. Per contra, it was submitted by the learned advocate for the party no. 1 that the claimants were not workmen as per terms of the Section 2(s) of the Act and as such, there is no question of termination and as such, the reference is not maintainable. In support of such contentions reliance was placed on the decision reported in 2005 (1) LLJ-117 (Supra). It was further submitted that the claimants were apprentices and they failed in the examination conducted by the party no. 1 for appointment of the apprentices in different mines and as such, they cannot claim employment with the management. It was also submitted that similar disputes were also raised before the conciliation forum and the Central Government vide order no. 18/20-10-1999 refused to make the reference as per annexure M-11 and the union also raised the dispute before the Hon'ble High Court Judicature of Bombay, Nagpur Bench in W.P. No. 3520/2001 and the Hon'ble Court vide order dated 11-9-2002 dismissed the said petition and the Hon'ble High Court, Nagpur Bench in W.P. No. 425/2003 vide order dated 29-3-2004 have held that having regard to the large number of candidates, who have undergone apprenticeship training with respondent management, the procedure cannot be regarded as arbitrary and unlawful and the mere completion of apprenticeship training doesn't confer any vested right in the apprentice to the regular employee and the Hon'ble High Court of Chattisgarh in W.P. 38/2009 have held that apprentices are not workmen and therefore, they have no claim for regular employment and in view of the same, the claimants are not entitled for any relief.

8. In view of the submissions made by the parties, the first point for consideration is as to whether the claimants were workmen and the reference is maintainable or not.

From the evidence adduced by the parties and the documents available on record, there is no doubt that the four claimants were appointed as apprentices under the Apprenticeship Act, 1961 and in the appointment letter itself it had been mentioned that the claimants were selected as apprentices under the Apprenticeship Act, 1961 on consolated monthly stipend of Rs. 580 to undergo training for a period of one year and during that period, they were to be posted in any underground mines of Ballarpur Area for mise, jobs and they are to be governed by rules of Apprenticeship Act, 1961 during that period. According to the claimants, by order dated 24-7-1997, they were appointed regularly and worked for more than 190 days in the underground in one calendar year and as such, they were protected under Section 25-F of the Act. However, by taking the contents of the letter dated 24-7-1997 into consideration and the admission of the claimants in their cross-examination that they were getting Rs. 580 per month

as stipend during the extended period, it can be held that there was no appointment of the claimants in regular service, but the period of their apprenticeship was extended vide order 24-7-1997. The order dated 24-7-1997 is not an appointment letter in any post. According to the own showing of the claimants contribution for CMPF was deducted from February 1997, admittedly when they were apprentices and from the said fact, it cannot be said that the claimants were regularly appointed in any post.

Whether apprentices are workmen or not had come up before the Hon'ble Apex Court for consideration in the case of UPSEB Vs. Shiv Mohan Singh and other as reported in 2005 (1) LLJ-117 (Supra). The Hon'ble Apex Court in the said decision have held that, "As per the scheme of the Act it appears that the contract of apprentice is entered with employer and apprentice, and he has to undergo a training for fixed duration and he will get stipend for that. After successfully undergoing training, he appears for test for certificate as required under section 21. During the training period, he will be treated as apprentice and he shall not be deemed as a workman as per section 18 of the Act read with definition of workman under section 2(r). It is ordained in sub-section (b) of section 18 that provisions of any law with respect to labour shall not apply to or in relation to such apprentices. Therefore, on a reading of all the provisions together what it transpires is that apprentice will be treated as apprentice and he will not acquire a status of workman in that establishment. After the successful completion of the training he will undergo a test and on being successful in the test a certificate to that effect will be issued to him as per section 21. It is open for the employer to offer him employment but it will not be obligatory on the part of the apprentice to serve that employer as per section 22, except when there is specific condition of contract to that effect. During the course when he undergoes the apprenticeship training he is only entitled to get stipend under rule 11 at such rate as are prescribed in the Rules.

Therefore, a combined reading of the sections as well as rules makes it clear that the apprentices are only the persons to undergo training and during that training, they are entitled to get a particular stipend, they have to work for a fixed hours and at the end of the period of training, they have to appear in the test and a certificate is issued to them. There is no obligation on the part of the employer to give them any employment whatsoever. The position of the apprentice remains as an apprentice/a trainee and during the period of training they will not be treated as workmen. Only obligation on the part of the employer is to impart them training, as per provisions of the Acts and Rules and to pay them stipend as required under Rule 11 and beyond that there is no obligation on the part of the employer to accept them as his employees and give them status of workmen. There is no relationship master and servant or employer and employee.

X X X X X

It is also necessary to mention here that the definition of the word "workman" as given in section 2(z) of the UP Industrial Act, 1947 and section 2(s) of the Industrial Dispute Act, 1947. Both the definitions include apprentice. But the expression appearing in the Section 2(z) of the UP Industrial Dispute Act, and Industrial Dispute Act, 1947 are not applicable to the apprentices appointed under the Apprenticeship Act, 1961. The Apprentices Act is a code in itself and it clearly stipulated that in section 2(aa) apprentice means a person who is undergoing apprenticeship training in pursuance of contract of training and the workers are employed for wages for work done by them. Section 18 clearly mentions that the apprentices are not workmen and the provisions of any law with respect to labour law shall not apply or in relation to such apprentices. Therefore, reading of definition of apprentice in section 2(aa) and 2(r) read with section 18 of the Apprentices Act leaves no manner of doubt that this Act which is special Act doesn't cover the apprentices and precludes the application of any other labour laws. i.e. UP Industrial Disputes and Industrial Disputes Act, 1947. When both these Acts are not applicable then labour Court/ Industrial Tribunal will not have any jurisdiction to entertain any dispute arising there for. The application of the UP Industrial Disputes Act, 1947 and the Industrial Disputes Act, 1947 automatically stand excluded."

It is also found from the document filed by the management that different unions had raised industrial disputes before the ALC (C) Chandrapur for regularization of all the apprentices and as the conciliation failed, failure report was submitted by the ALC to the Central Government but the Central Government, Ministry of Labour Vide letter dated 18/20-10-1999 refused to refer the matter for adjudication to the Tribunal on the ground that the candidates in questions were apprentices under Apprentices Act and they cannot claim regularization as a matter of right and such of them, as were meritorious fit had been absorbed against regular vacancies.

In view of the principles enunciated by the Hon'ble Apex Court in the judgment mentioned above, which are squarely applicable to the present case at hand, it is held that the claimants are not workmen and as such, application of section 25-F of the Act doesn't arise and there was no question of termination of their services, and as such, the reference made by the Government is not maintainable.

9. The second point raised is regarding the entitlement of the claimants for regularization in service and their entitlement for reinstatement in service with continuity and full back wages. In this regard, it is necessary to mention about the judgments of the Hon'ble High Court of Judicature of Bombay, Nagpur Bench in Writ Petition no. 3520/2001 and Writ petition no. 425/2003. In W.P. No. 3520/2001, petitioner Sadik Mohd. Sheikh had prayed for his regularization in service of WCL, on the grounds that even after completed a year of apprenticeship and even

after having been continued thereafter till October 6th 1998, his services were not regularized, whereas, the other apprentices, who were working with him and were junior to him, were regularized in service. The case of the present claimants is similar to the case of petitioner in WP no. 3520/2001 in toto. The Hon'ble High Court dismissed the Writ petition by taking into consideration about the refusal of the government to refer the matter to the Tribunal for adjudication and on the ground that the petitioner did not come to the court with clean hands.

In writ petition 425/2003, the petitioners, who were apprentices under WCL had prayed for their appointment in the WCL and the Hon'ble Court rejected the writ petition, on the ground that mere completion of apprenticeship training doesn't confer any vested right in the apprentices to regular employment.

The Hon'ble High Court of Judicature at Bilaspur also dismissed writ petition no. 38/2009 along with writ petitions 752/2009, 975/2009, 106/2009, 1108/2009 and 554/2009 which were filed by apprentices under SECL and Coal India Limited for appointment.

It is already mentioned above that the case of the present claimants are similar to the case of the petitioner in writ petition no. 3520/2001 in toto. There is no difference in the case of the present claimant and the case of the petitioner in 3520/2001. So applying the principles enunciated by the Hon'ble Apex Court and Hon'ble High Court of Bombay, Nagpur Bench and the High Court of Judicature at Bilaspur (Chhatisgarh) in the decisions mentioned above to the present case at hand, it is found that the claimants are not entitled for reinstatement in service or regularization in service. Hence, it is ordered;

ORDER

The reference is not maintainable and the claimants are not entitled for any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2011

का.आ. 3252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टरेट ऑफ नवल हेडक्वार्टर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 227/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-10-2011 को प्राप्त हुआ था।

[सं. एल-14012/24/2007-आईआर (डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th October, 2011

S.O. 3252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 227/

2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Directorate of Naval Headquarters and their which was workmen, received by the Central Government on 20-10-2011.

[No. L-14012/24/2007-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL No. 1,
KARKARDOOMA COURTS COMPLEX: DELHI**

I.D.No. 227/2011

Shri Virender Kumar
S/o Late Sh. Har Prasad,
R/o H.No.44, Saket,
Block Mandavali Fazalpur,
Delhi & others

...Workmen

Versus

The Principal Director of Admn.
(Maintenance Section)
Directorate of Naval Headquarters,
'A' Block Hutments,
New Delhi

...Management

AWARD

Claimants, namely, Shri Satbir Singh, Virender Kumar, Amar Singh, Bijender Kumar and Sanjay Kumar were engaged as casual labours by the Principal Director of Administration (Maintenance Section), Directorate of Naval Headquarters, New Delhi, (hereinafter referred to as the Navy). They were so engaged on different dates at intervals. On the 14th March, 1997 a public notice was published in Nav Bharat Times by the Navy giving an opportunity for re-employment to all concerned, who had worked as casual labour in past from November, 1986 and onwards. A list of 951 persons was prepared and displayed, in which list names of the claimants figured. They approached the Navy for their re-employment, but to no avail. They sought redressal of their grievances with the Central Administrative Tribunal (in short the CAT), who ordered for their re-employment vide order dated 22-12-2000. Subsequently, when their engagement was discontinued, they again knocked the door of the CAT, who ordered for their re-employment vide orders dated 12-2-2004, 19-5-2004, June 2004 and 12-7-2004. They worked with the Navy as casual labours till 31-8-2006. Efforts for regularization were also made, which application was declined by the CAT. Writ petition filed before High Court of Delhi also met the same fate.

2. Casual work, taken from the claimants and others, was assigned by the Navy to a contractor, namely, M/s Group 2 Security Services with effect from 1-9-2006. Services of the claimants, besides others, were terminated by the Navy. This action was assailed by the claimants before the Conciliation Officer. When conciliation proceedings failed, the appropriate Government referred the dispute to the Central Government Industrial Tribunal No.2, New Delhi, vide its order No. L-14012/24/2007-IR(DU), New Delhi, dated 18-6-2008, with following terms :

“Whether the contract between the management of Principal Director of Administration (Maintenance Section) Dte. Of Naval H.Q. and the contractor M/s. Group 2 Security Services, with regard to employment of Shri Virender Kumar, Shri Amar Singh, Shri Satbir Singh, Bijender Kumar and Sanjay Kumar is sham and bogus? If yes, whether the action of the principal employer in terminating the services of the above workmen w.e.f. 31-8-2006 is legal and justified? If not, to what relief the workmen are entitled to?”

3. Claim statement was filed on behalf of Shri Virender Kumar, Amar Singh, Satbir Singh and Bijender Kumar pleading that they were engaged as casual labour on different dates at intervals. They served the Navy till 1994. On 14-3-97 a public notice was given in press for re-employment of the persons, who had served the Navy as casual labours in past. A list of 951 persons was displayed, wherein their names figured. Despite their willingness to serve the Navy they were not re-employed. Virender Kumar and Amar Singh filed applications before the CAT, which were granted vide order dated 22-12-2000. They were re-engaged, but their services were discontinued again. The CAT was approached again and in pursuance of the orders passed, they were re-employed as casual labours on 12-2-04, 19-5-04, June 2004 and 12-7-04 respectively. In the year 2005 they moved the CAT for their regularization in the services of the Navy, which application was declined. Writ petition was also filed before the High Court of Delhi, but to no avail. They continuously served the Navy upto 31-8-2006.

4. The Navy allotted the work, which was taken from the casual labours, to a contractor, namely, M/s. Group 2 Security Service with effect from 1-9-2006. Their services were terminated, without any notice. The Navy has engaged their juniors for casual jobs. The contractor pays them lesser wages. Work is still available with the Navy. They claim that the action of terminating their service is uncalled for. They seek directions for the Navy for their re-engagement as casual labours, besides regularization in service.

5. Shri Sanjay Kumar opted not to file his claim statement.

6. The Navy put in its appearance through Sh. Amresh Kumar, authorized representative, on 26-5-2009.

On several subsequent dates Shri M.P.Singh, authorized representative sought time to file written statement till 27-1-2010. Instead of filing its written statement, the Navy opted to abandon the proceedings, with effect from 30-3-2010, the date when it was proceeded ex-parte.

7. Claimants filed their respective affidavits as evidence in support of their claim, besides various documents to show their engagement by the Navy on different dates at intervals.

8. Vide order No. Z-22019/6/2007-IR (C-II) dated 30th March, 2010, the reference was transferred to this Tribunal by the appropriate Government.

9. Arguments were heard at the bar. Claimants presented facts in person. I have given my careful considerations to the arguments advanced at the bar and cautiously paused the record. My findings on issues involved in the controversy are as follows:

10. The provisions of the Industrial Disputes Act, 1947 (in short the Act) confer powers and jurisdiction upon the adjudicatory authorities to make appropriate awards in determining industrial disputes brought before them. Once a reference has been made to an adjudicatory authority, the dispute has to be resolved and adjudication cannot be avoided on the ground of absence of the workman or the management, as the case may be; when they decide not to pursue the matter. On a reference under section 10(4) of the Act, the Tribunal is required to confine its adjudication to the points in dispute and also matters incidental thereto. Phrase “matter incidental thereto” would mean “something incidental to a dispute happening as a result of or in connection with the dispute or associated with the dispute.” For instance, on an industrial dispute being referred to it, the Tribunal has jurisdiction to determine whether on the facts placed before it an “industrial dispute” within the meaning of Section 2(k) has really arisen, or the concerned persons are “workmen” as defined in section 2(s) or a particular undertaking is an “industry” within the meaning of Section 2(j) of the Act or such industry is a live industry or closed industry. Such questions can be validly examined and adjudicated upon by the Tribunal as matters “incidental” to the points of dispute specified in the order of reference.

11. In view of the facts placed by the claimants, in their claim statement, affidavits and documents submitted, an incidental question arises as to whether the Navy is an industry, within the meaning of Section 2(j) of the Act. To answer this proposition, it is expedient to have a glance on definition of word “industry”, provided in clause (j) of Section 2 of the Act, which definition is extracted thus:

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen”

12. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

13. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "Industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "Industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decisions have centered around the expression "undertaking" used in the definition. In *Bangalore Water Supply and Sewerage Board (1978 Lab.I.C. 778)* the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of Section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S. 2(j) and explained in *Banerji (AIR 1953 S.C. 58)* has a wide import.

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad

or foods) prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although Section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in *Banerjee* and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I(supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures" analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfill the triple tests listed in I(supra), cannot be exempted from the scope of Section 2(j),

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission, many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers

volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C. 657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Govt. or statutory bodies.

(c) Even in department discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S. 2(j)

(d) Constitutional and competently enacted legislative provisions; may remove from the scope of the a categories which otherwise may be covered thereby.

V. We overrule *Safdarjung* (AIR 1970 S.C.1407) Solicitors' case (AIR 1962 S.C. 1080) *Gymkhana* (AIR 1968 S.C. 554) *Delhi university* (AIR 1963 S.C.1873) *Dhanraj Giriji Hospital* (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the *Hospital Mazdoor Sabha* (AIR 1960 SC 610) is hereby rehabilitated."

14. Principles laid down in *Bangalore Water Supply and Sewerage Board* (supra) holds ground. In *Baroda Borough Municipality* [1957(1) LLJ 8] the Apex Court held that through municipal activity could not be truly regarded as business or trade, yet it would fall within the scope of expression 'undertaking'. Non-profit undertaking of the municipality were included in the concept of 'industry' even if there is no private enterprise. The court reiterated that branches of work that can be regarded as analogous to carrying out of a trade or business would fall within the meaning of 'Industry' in clause (j) of Section 2 of the Act. In reaching the decision, the Apex Court relied precedent

in *D.N. Banerji* (supra) and ruled that it would be sufficient that the activity is an 'undertaking' analogous to the carrying on of a trade or business and involves cooperation between the employers and employees. This result was reached by extending the meaning of the expression 'undertaking' to cover adventures not strictly trade or business but 'objects vary similar'. Reference can also be made to *Madras Gymkhana Club Employees Union* (supra).

15. In *Indian Standard Institute* [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In *Bangalore Water Supply and Sewerage Board* (supra), the Apex Court laid down that an activity systematically or habitually undertaken for the production or distribution of goods for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employee for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry'. If other conditions are satisfied. It is the activity in question which attracts the definition and the absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into 'industry' if other tests are not satisfied.

16. What are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In *Corporation of City of Nagpur* [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In *Hospital Mazdoor Sabha* [1960 (1) LLJ 251] the Supreme Court adumbrated the test; can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was

reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed “*** sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are “industry” and they are substantially severable, they can be considered to come within section 2(j)”. In chief conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed “*** even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as “industry”, if substantially severable”.

17. Whether the Navy discharges regal or sovereign function? For ascertaining functions of Indian Navy it is expedient to trace history of the force. Ancient history tells that Chandragupta Maurya established an Admiralty Division under a Superintendent of Ships as a part of his war office, with a charter including responsibility for navigation on the seas, oceans, lakes and rivers. Between the fifth and tenth centuries A.D., the Vijaynagaram and Kalinga Kingdoms had established their rule over Malaya, Sumatra and Western Java. In the period 984-1042 AD, the Chola Kings despatched great naval expeditions which occupied parts of Burma, Malaya and Sumatra. In thirteenth century, decline of Indian maritime power commenced and Indian sea power had almost disappeared when the Portuguese arrived in India.

18. Indian maritime interests witnessed a remarkable resurgence in the late seventeenth century, when the Sidis of Janjera allied with Moghuls to become a major power on the West Coast. This led Shivaji to create his own fleet, which held sway over the entire Konkan Coast, keeping the English, Dutch and Portuguese at bay. However in 1729, a vacuum in leadership resulted in decline of the Maratha Sea Power. History of Indian Navy can be traced back to 1612, when British East India Company was forced to maintain a small fleet at Swally, near Surat, called company's Marine. In 1686 name of this force was changed to Bombay Marine. This force rendered unique service, fighting not only the Portuguese, Dutch and French, but also interlopers and pirates of various nationalities. The Bombay Marine was involved in combat against the Marathas and the Sidis and participated in Burma war in 1824.

19. In 1830, the Bombay Marine was renamed Her Majesty's Indian Navy. With the capture of Alen by the British and the institution of the Indus Flotilla, the Navy's commitments grew manifold and its deployment in the China war in 1840 bears adequate testimony to its proficiency. It was re-named the Bombay Marine from 1863 to 1877, after which it became Her Majesty's Indian Marine.

At this time, the Marine had two divisions, the Eastern Division based at Calcutta and the Western Division at Bombay. In recognition of services rendered during various campaigns, its title was changed to Royal Indian Marine in 1892. It went into action during the First World War. In 1934 it was re-organised into the Royal Indian Navy. In recognition of its services, it was presented with the king's colour in 1935. It had eight warships at the outbreak of the Second World War. By the end of the war, its strength had risen to 117 Combat Vessels and 30,000 personnel. On India attaining independence, the prefix “Royal” was dropped on 26th January, 1950.

20. On 15th August, 1947 Nawab of Junagadh signed an instrument of accession to Pakistan and ordered his troops to occupy adjacent states of Babariawad and Mangrol, which had already acceded to India. On 17th October 1947, Government of India issued instructions to the Navy to land an army task force on Kathiawar Coast. Navy landed three columns of troops at Porbandar, Jaffarabad and Mangrol. On landing of the force, Junagadh Army surrendered unconditionally and Nawab fled to Pakistan. It was the first high-water mark in the history of independent India's Navy.

21. Above prelude makes it clear that Indian Navy is a maritime force. Indian Navy and Coast Guard protect territorial waters of the country along with its coast lines. Breadth of territorial waters is 12 nautical miles measured from baseline, according to Article 3 of the U.N. Convention on the Law of the Sea, 1982 (herein after referred to as the Convention). Contiguous Zone is that part of the sea which is beyond and adjacent to the territorial sea of the Coastal State. Article 53 of the Convention declares that a Coastal State may exercise its control in a zone contiguous to its territorial sea with a view to— (a) prevent infringement of its customs, fiscal, immigration or sanitary regulation within its territory or territorial sea; (b) punish infringement of the above regulations committed within its territory or territorial sea. The contiguous zone may not extend beyond 24 miles from which the breadth of territorial sea is measured.

22. Article 1 of the Geneva Convention on the Continental Shelf, 1958, defines Continental Shelf in the following words: “The Continental Shelf is (a) the sea bed and sub-soil of the sub-marine area adjacent to the coast but outside the area of territorial sea to depth of 200 meters or beyond that limit to where the depth of superjacent Water admits all exploitation of natural resources of the said area; (b) to the sea-bed and sub-soil of similar sub-marine area adjacent to the coast of island”. In third U.N. Conference on the Law of Sea continental shelf has been defined comprising “the sea-bed and sub-soil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baseline from which the

outer edge of the continental margin does not extend upto that distance". The right of the Coastal State in respect of the area of the Continental Shelf that constitutes of natural prolongation of its land territory into and under the sea exist ipso facts and ab initio by virtue of its sovereignty over the land and as an extension of it in exercise of sovereign right for the purpose of exploring the sea-bed and exploiting its natural resources. Article 76 of the Convention avoids legal ambiguity and defines outer limit of the Continental Shelf beyond 200 nautical miles from the baseline from the breadth of the territorial sea is measured.

23. Article 55 of the Convention provides that in the Exclusive Economic Zone the Coastal State has sovereign right for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living of the sea-bed and sub-soil and the superjacent waters, and with regard to other activities from the economic exploitation and exploration of the zone.

24. To exercise sovereignty over territorial sea, contiguous zone, continental shelf and exclusive economic zone coastal surveillance and patrol is undertaken by our maritime force. For coastal surveillance, on areas detailed above, Indian Navy closely coordinates with Coast Guards and patrols the entire coastal areas and assists Marine Police of each Coastal State and CISF units deployed at all major ports. In that bid Indian Navy has established Joint Operation Centres at Mumbai, Visakhapatnam, Kochi and Port Blair, which are manned round the clock by Naval and Coast Guard teams. The functions, as enumerated above, performed by Indian Navy are regal and sovereign. Besides above functions, Indian Navy carried out operation for evacuation of Indians from Libya and Lebanon, which functions are also regal and sovereign.

25. Whether the unit in which the claimants worked could be considered as "industry" and substantially severable from regal and sovereign functions? For answer to this proposition, it is expedient to have a glance on the evidence adduced by the claimants. In his affidavit, tendered as evidence, Shri Virender Kumar unfolds facts relating to his engagement by the Navy since 1990 at different intervals. He speaks of his dis-engagement and publication of notice in news paper on 14-3-1997, inviting applications for re-engagement from persons who had rendered service as casual labour with the Navy in past. He announces that when he was not re-engaged despite his willingness, he moved the CAT and an order was passed in his favour. Despite the order, so passed by the CAT, he was not re-employed. He again approached the CAT, besides other claimants and their applications were disposed off vide order dated 26-5-2004. A contempt petition was also filed and they were re-engaged on 12-2-04, 19-5-04, June 2004 and 12-7-2004 respectively. They served the Navy continuously till 30-8-2006. Their services were terminated on 1-9-2006 without any notice. They were employed through a contractor, namely M/s.

Group 2 Security Services with effect from 1-9-06. Other claimants have repeated the very facts narrated by Shri Virender Kumar.

26. Evidence adduced by the claimants bring it over the record that they were employed by the Navy for cleanship of Directorate of Submarine Operations premises in Naval Head Quarter or Directorate of Dockyards premises in the Naval Head Quarter or Western Command Complex at D-II Wing/Third Floor of Sena Bhawan, used by Directorate of Fleet Maintenance, or at the residence of the Deputy Chief of Naval Staff, Integrated Headquarters, Ministry of Defence (Navy), New Delhi. Not even an iota of evidence has been projected by the claimants to show that within the wider circle of sovereign functions performed by the Navy there was an inner circle encompassing the unit in which they worked, which can be considered as an "industry" and this unit was severable substantially from the regal functions. Even otherwise facts detailed above do not project that the unit, where claimant rendered casual jobs, was substantially severable from sovereign functions being performed by the Navy. Hence it cannot be said that the unit where the claimants worked was an "industry" within the meaning of section 2(j) of the Act and severable from primary and inalienable functions of the Navy. When the Navy is not an industry, this Tribunal cannot invoke its jurisdiction to adjudicate the dispute, under the Act. This dispute cannot partake character of an "industrial dispute" within the meaning of section 2(k) of the Act.

27. Answer to the incidental question, referred above, make it clear that the reference of the dispute for adjudication to this Tribunal was beyond the competence of the appropriate Government. Since neither the dispute is an industrial dispute nor the Navy is an industry within the provisions of section 2(j) of the Act, this Tribunal has no option but to refrain its hands from adjudication. In view of the reasons, detailed above, neither the Navy can be commanded to re-engage the claimants for casual jobs nor their claim for regularization of their services can be answered in their favour. An award is, accordingly, passed. It be sent to the appropriate Government for publication. Dated : 13-9-2011

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2011

का.आ. 3253.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एलसीआईडी-107/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-10-2011 को प्राप्त हुआ था।

[सं. एल-40025/4/2011-आईआर (डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th October, 2011

S.O. 3253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LCID-107/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of department of Telecom and their workmen, which was received by the Central Government on 20-10-2011.

[No. L-40025/4/2011-IR(DU)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : - Shri Ved Prakash Gaur, Presiding Officer

Dated the 13th day of September, 2011

Industrial Dispute: L.C. D.No. 107/2009

Between :

Sri Sk. Mohd Jeelani,
S/o Late Khaza Mia,
R/o 22/444, Halthalim Street,
Dycose Road, Nellore,
Nellore District.

...Petitioner

AND

1. The Chief General Manager,
Telecom(BSNL), Andhra Pradesh,
Door. Sanchar Bhawan,
Hyderabad:- 500 001.
2. The General Manager Telecom District(BSNL)
DTO Compound, Nellore,
3. The Superintendent,
The Telegraph Traffic, Nellore.

...Respondents

Appearances :

For the Petitioner : M/s. A. Raghu Kumar,
Basavaiah & B. Pavan Kumar,
Advocates

For the Respondent : Smt. Ch. Lakshmi Kumari,
Advocate

AWARD

This petition under Sec.2 A (2) of the I.D. Act, 1947 has been filed by Sri Sk. Mohd. Jeelani alleged Ex. Worker

of Bharat Sanchar Nigam Ltd., challenging the order of his disengagement dated 29-2-2002 and to reinstate him to his post with all the service benefits.

2. It is alleged that he was engaged as casual group D employee during strike period 7-3-1988 to 8-3-1988 in Department of Telegraph Office, Nellore. Thereafter he worked in the said office for 8 hours per day and completed 240 days in 1990, 1991, 1998 and 1999. He submitted his representation dated 29-1-2002 for grant of temporary status but he was disengaged from service on 29-2-2002. Aggrieved with this action of management he filed OA 764/2003 before the Hon'ble Central Administrative Tribunal, Hyderabad seeking reengagement and regularization. Hon'ble Central Administrative Tribunal disposed off the said OA vide order dated 30-12-2000 directing the Respondent to reconsider the representation of the Petitioner and passed appropriate speaking orders. Petitioner filed representation which was disallowed. Thereafter he filed WP No.373/1986 which was decided on 27-10-1987.

3. The Department formulated a scheme on 7-11-1989 vide Telecom Department letter No.269-10/89-STN dated 7-11-1989 called Casual Labourers (Grant of Temporary status and Regularization) Scheme of Department of Telecommunications, 1989 which stated that the casual labour who were currently employed and who rendered continuous service of atleast one year and were engaged for 240 days in a year would be eligible for regularization.

4. A cut off date 30-3-1985 was fixed for temporary status which was later extended to 1-8-1998 vide DOT No.269-4/93-STN -II(Pt) dated 12-2-1999. When the Department did so, it took note of the situation that even though there was a complete ban of recruitment of casual labour the authority continued to engage casual labours due to exigencies of service.

5. The Department of Telecom vide its order No.269-13/99-STN-II dated 16-9-1999 as one time measure decided to convert part time casual labours with 4 or more hours of duty per a day who worked for more than 240 days in preceding 12 months into full time casual labour. Again the Department of Telecom issued order No.269-13-STN-II dated 25-8-2000 to convert part time casual labours with less than 4 hours duty per day who have worked for 240 days for preceding 12 months into full time casual labours. Again DOT vide letter No.269-94/98-STN-II dated 29-9-2000 decided to regularize the services of all part time, full time casual labours and casual labours with temporary status (temporary status employees). In light of the above order, the Petitioner is eligible for grant of temporary status.

6. It has further been stated that w.e.f. 1-10-2000 Government of India established a company called Bharat Sanchar Nigam Ltd., and transferred all the staff, assets along with rights and liabilities of DOT in the newly

constituted company and Petitioner is eligible for conversion into full time casual labour.

7. Before the date of retrenchment the Petitioner has completed more than 240 days and he was entitled for the benefit of Sec.25H of the Industrial Disputes Act, 1947 which was not complied with by the Respondent management before disengaging the services of the Petitioner. Not only that, juniors to the Petitioner were re-engaged as such, the Petitioner filed WP No.23469/2005 which was disposed off by the Hon'ble High Court of A.P., Hyderabad with the following order :

"Accordingly, the writ petition is disposed off granting liberty to the petition to approach the labour authorities under the Industrial Disputes Act, 1947 for the relief sought in the Writ Petition". Thus, this petition has been filed.

8. Respondent management filed counter and alleged that the facts mentioned in the claim petition is not correct. The claim of the Petitioner for grant of temporary status and regularization of the service is misconceived because Petitioner is neither a casual labour nor a part time casual labour at any point of time in the Department of management.

9. The Petitioner worker himself has alleged that he worked for only two days only on 7-3-1988 to 8-3-1988 during the strike period. Later he worked as a contract labour. He filed OA No.772/2003 which was disposed off with a direction to dispose off his representation within two months. Representation of the Petitioner was rejected on 20-9-2003 because his claim was not found true and legal for his regularization and absorption. There is no proof that the Petitioner has worked in every month under muster rolls and work order month wise. He has not filed any document in support of his claim, the burden is on Petitioner. There was a ban by Department of Telecommunication not to engage casual mazdoors vide letter dated 22-6-1998 as such, Petitioner could not have been engaged after that date. The Petitioner's alleged service is neither legal nor valid nor supported with any document. There is no proof that Petitioner has worked for 240 days in 1990, 1991, 1998 and 1999.

10. Though Department of Telecommunication has formulated a scheme, the Petitioner does not come within the purview of the particular scheme nor he was entitled for regularization or absorption. Petitioner has not worked for 240 days in preceding 12 months. He could not provide any evidence that he has worked as part time casual labour as such, he can not claim to be converted into a full time labour. The rules issued vide letter dated 16-9-1999 and 25-8-2000 are not applicable in the matter of the Petitioner. No junior to the Petitioner was engaged. The petition is misconceived and deserves to be dismissed.

11. Both the parties have filed their evidence. Petitioner filed his affidavit as examination in chief and

presented himself for cross-examination. He has marked 13 documents Ex.W1 to W13. Respondent management has filed affidavit of Sri B. Polaiiah A.G.M., HR and presented him for cross-examination. He has marked EX.M1 to M7 and has been cross-examined at length. Both the parties have filed their written arguments. Petitioner has made oral submissions also.

12. I have heard both counsels and I have gone through claim statement, counter statement and evidence of the parties and their written arguments.

13. It has been argued orally as well as through written submission by counsel for the Petitioner that the Petitioner has worked as telegraph delivery boy in the years 1990, 1991, 1998 and 1999, his services were for less than 4 hours. He used to get Rs.20/- fixed per day as such. When the Department of Telecommunications introduced the scheme of grant of temporary status and regularization, Petitioner's case was fit to be considered and he was fit to be converted into full time casual labour. The management has not considered this aspect of the matter, the management has again engaged the Petitioner in the year 1999 and Petitioner continued to work upto 2002 when he moved application for regularization his services were disengaged without giving any notice or retrenchment compensation as required under Sec.25H of the Industrial Disputes Act, 1947 as such, the disengagement order dated 29-2-2002 is illegal, arbitrary and unfair labour practice and deserves to be quashed. He has relied on the case reported in 2003(3) Administrative Total Judgements page 209 in the matter between S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka.

14. Against this argument of the Learned Counsel for the Petitioner worker Learned Counsel for the Respondent management has argued that there is no iota of evidence on the record to substantiate the claim of the Petitioner that he worked in the years 1990, 1991, 1998, 1999, 2000 and 2002 for more than 240 days in anyone of the years. From the assertion of the Petitioner he was engaged for only two days i.e., 7th and 8th March, 1988 when there was strike of the employees of the Telecom Department. After that, when the Petitioner was appointed, who appointed the Petitioner, how he was appointed has not been proved by the Petitioner. He has further argued that Telegram is a public utility services. In Public utility service Department there are rules of recruitment and it is the duty of the Petitioner to prove that he was appointed as per recruitment rules. If the Petitioner is able to prove that he was appointed as per recruitment rules then only he can claim that his services were terminated without following due process of law. If the Petitioner is unable to prove that he was legally and validly appointed in that case even if for the sake of argument it is accepted that Petitioner has worked in the Department of Telecommunications for few number of the days in any of the year alleged to have served by the Petitioner, his

disengagement can not be said to be illegal because if the entry of the Petitioner in the Department itself is illegal he can not challenge the legality of his disengagement as held by Hon'ble Supreme Court of India in the case law reported in 2006(4) SCC page 1 Secretary of State of Karnataka and Others vs. Umadevi which has been reiterated by the Hon'ble Supreme Court in its written judgement in Civil Appeal No.292/2009 arising out of SLP (C) No.77803/2006 in the matter of Bharat Sanchar Nigam Ltd., Jammu Vs. Teja Singh wherein Hon'ble Supreme Court has stressed the need to follow the principles laid down in the case of Umadevi by all the courts of the country without any deviation. In the matter of Teja Singh the claim of the Petitioner was dismissed because he was not engaged through lawful means and by following the principles of recruitment process.

15. On the basis of the above argument this Tribunal has to consider the following points:

- (I) Whether the action of the management of Bharat Sanchar Nigam Ltd., in disengaging the services of Sri Sk. Mohd. Jeelani is legal and justified?
- (II) To what relief if any the Petitioner is entitled?

16. **Point No.(I)** : In the present case the claim of the Petitioner is that he was engaged in the Department of Telecommunications in the year 1990 and he worked in the years 1991, 1998, 1999, 2000, and upto 2002. This fact has been challenged by the Respondent management. In the light of the challenge made by the Department of Telecommunications that Petitioner was not engaged by Department of Telecommunications, it is the duty of the Petitioner worker to prove that he was engaged in the Department of Telecommunications in the years alleged by the Petitioner. To prove this fact the Petitioner has filed paper No. EX.W4 alleged to be written by Divisional Engineer, Telecom to the Sub Divisional Engineer Telecom, Sullurpet, for payment of wages of Rs.800 in respect of wages of Sri Sk. Md. Jeelani. On what account this bill was presented is not clear. It appears that this wage bill was forwarded for payment of wages of contract labour of Sri Sk.Md. Jeelani for the month of January, 1998. Apart from this letter there is no other letter or bill or voucher to prove that said Sri Md. Jeelani has ever worked as casual labour or temporary labour as alleged by him. If he was a contract labour, for how much period he was engaged has not been clarified by the Petitioner and if he was engaged for the year 1998 he can not claim that he was engaged in the year 1990 or he worked in the year 1991 and so on. The only paper which the Petitioner has produced Ex.W4 goes to show that he was engaged as casual labour in the year 1998. Though the Petitioner has filed xerox copy of several vouchers but there is no mention of name of Petitioner in any voucher. In his own statement before this Tribunal though he has stated that he worked in the year 1990,

1991, 1998 and 1999 and has completed 240 days, he has not been able to clarify or state on oath that in which capacity he was engaged and he worked. In his cross-examination he has admitted that he worked as contract labour for delivering telegrams. He has further admitted that he did not join before cut off date. Though he has stated that he does not know whether Government of India has imposed ban on engagement of casual labour vide order dated 22-6-1988. The management has filed copy of the letter imposing ban on engagement of casual labour after 22-6-1988. Petitioner has stated that no appointment letter was issued to him from Department of Telecommunications. Then how he was engaged is a matter of concern. It was the duty of the Petitioner to prove that he was appointed or engaged in the Department of Telecommunications under a valid appointment order or recruitment procedure. The statement of the Petitioner that he was not given any appointment order proves that he was engaged from the back doors without issuing any appointment letter and without following recruitment rules. More over, the documents produced by Petitioner and his own statement prove that he worked as contract labour for a certain number of days for delivering telegrams, this will not confer the status of casual labour on the Petitioner. The documents and orders issued by the Department of Telecommunications which has been marked by Petitioner as Ex. W1 to W9 are not helpful to the Petitioner for conferring right of casual labour on him.

17. Petitioner claims that he worked in the year 2002 but there is no iota of evidence to prove that he has worked in the year 2002. The evidence shows that he filed OA No.764/2003 in which Hon'ble Central Administrative Tribunal has directed only to decide the representation of the Petitioner which has been decided by the Department and Department has chosen to reject the representation of the Petitioner, which was not covered under any of the government orders claimed by the Petitioner through EX.W1 to W9. Before this Tribunal also Petitioner has not been able to produce any single evidence to prove that he was disengaged in the year 2002 or he was ever appointed through lawful procedure of the appointment rules as such, even if the Petitioner is disengaged without complying the provisions of Sec.25H or F of the Industrial Disputes Act, 1947, since Petitioner's initial appointment itself was not through lawful means, Petitioner can not claim that his disengagement was illegal or unjustifiable as held in the case of Secretary, State of Karnataka and Ors. Vs. Umadevi reported in 2006(4) SCC page 1 and the latest judgment of Hon'ble Supreme Court in the matter of Civil Appeal No.292/2009 between Bharat Sanchar Nigam Ltd., Jammu Vs. Teja Singh. This Tribunal is of the considered opinion that the Petitioner's appointment was not as per rules, in that case even if he was disengaged in the year 2002 without observing the provisions of Sec.25H and F of Industrial Disputes Act, 1947 it can not be said that the action of the management was illegal or unjustifiable. Point

No.(I) is decided accordingly.

18. Point No. (II) : The Petitioner was neither appointed nor he has worked as casual mazdoor or daily rated workman nor he was disengaged from the services on the alleged date. His disengagement is neither illegal nor unjustifiable as such, he is not entitled for any relief. The petition is misconceived and Petitioner is not entitled for any relief. The point No.(II) is decided in favour of the management.

16. From the above discussion, this tribunal is of the opinion that the Petitioner was neither legally engaged nor he was illegally dismissed from the service and he is not entitled for any relief, as such, this petition is dismissed. Hence, this award.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 13th day of September, 2011.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : Witnesses examined for the Respondent

WW 1: Sri Sk. Mohd. Jeelani : MW1: Sri B. Polaiah

Documents marked for the Petitioner

- Ex.W1: Copy of certificate issued by 3rd Respondent office for the work period from 7-3-1988 to 8-3-1988
- Ex.W2: Copy of DG Telecom, New Delhi Lr. No.269-10/89-STN dt.7-11-1989
- Ex.W3: Copy of DOT Lr. No.269-4/93-STN-II dt. 17-12-1993
- Ex.W4: Copy of Lr. No.A6/Wages/TT/13
- Ex.W5: Copy of gist of wages particulars
- Ex.W6: Copy of statement of particulars of contract labourers
- Ex.W7: Copy of DoT OM dt.12-2-99 - reg. the ban on engagement of casual labourers
- Ex.W8: Copy of Lr. No.269-94/98-STN-II dt.29-9-2000
- Ex.W9: Copy of Lr.No.SHK/2000-2001/Est/1 dt.22-2-2001
- Ex.W10: Copy of applicant's representation to the 2nd Respondent dt. 1-3-2002

Documents marked for the Respondent

- Ex.M1: Copy of scheme of management dt. 7-11-1989
- Ex.M2: Copy of Lr. of Respondent dt. 22-6-88
- Ex.M3: Copy of Lr. of Respondent dt. 21-10-1992

- Ex.M4: Copy of Lr. of Respondent dt. 12-2-99
- Ex.M5: Copy of Lr. of Respondent dt. 12-2-99
- Ex.M6: Consolidated statement of the MRs from January, 85 to September, 85
- Ex.M7: Copy of DoT OM dt.12-2-99 - reg. the ban on engagement of casual labourers
- Ex.M8: Copy of DoT OM dt.12-2-99 - reg. the contingent expenditure
- Ex.M9: Copy of DoT OM dt.15-6-99 - reg. the ban on engagement of casual labourers
- Ex.M10: Copy of endorsement letter of O/o CGMT, AP, HD dt.18-6-99
- Ex.M11: Copy of written statement filed before the ALC(C) Vijayawada in Lr. dt. 6-1-2004
- Ex.M12: Certified MRs running into 84 pages from January 1985 to February, 1985

नई दिल्ली, 20 अक्टूबर, 2011

का.आ. 3254.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या एलसीआईडी-108/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-10-2011 को प्राप्त हुआ था।

[सं. एल-40025/2/2011-आईआर (डीयू)]

जोहान तोपनो, अवर सचिव

New Delhi, the 20th October, 2011

S.O. 3254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LCID-108/2009) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of department of Telecom and their workman, which was received by the Central Government on 20-10-2011.

[No. L-40025/2/2011-IR(DU)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : - Shri Ved Prakash Gaur Presiding Officer

Dated the 13th day of September, 2011

Industrial Dispute L.C. No. 108/2009**Between :**

Sri Sk. Jaleel Basha,
S/o Kalesha,
R/o 26-1-917/2, NGO Colony,
A.K. Nagar (Post),
Nellore District-524004.

...Petitioner

AND

1. The Chief General Manager,
Telecom (B SNL), Andhra Pradesh,
Door Sanchar Bhawan,
Hyderabad - 500 001.
2. The General Manager Telecom District (BSNL)
DTO Compound, Nellore,
3. The Superintendent,
The Telegraph Traffic, Nellore.

...Respondents

APPEARANCES :

For the Petitioner : M/s. A. Raghu Kumar,
Basavaiah and B. Pavan
Kumar, Advocates

For the Respondent : Smt. Ch. Lakshmi Kumari,
Advocate

AWARD

This petition under Sec. 2 A (2) of the I.D. Act, 1947 has been filed by Sri Sk. Jaleel Basha, alleged Ex. Worker of Bharat Sanchar Nigam Ltd., challenging the order of his disengagement dated 29-9-2000 and to reinstate him to his post with all the service benefits.

2. It is alleged that he was engaged as casual group D employee during strike period 7-3-1988 to 8-3-1988 in Department of Telegraph Office, Nellore. Thereafter he worked in the Departmental Telegraph Office from 9-3-1988 to May, 1991 and he again worked as messenger in Central Telegraph Office (CTO), Nellore from 28-3-2002 to 4-5-2002 and thereafter he was not re-engaged. He submitted his representation dated 3-6-2002 for reengagement, conversion into full time casual labourer and grant of temporary status and regularization but there was no response. Aggrieved against the inaction of management he filed O.A. No. 772/2003 before the Hon'ble Central Administrative Tribunal, Hyderabad seeking reengagement as casual labour, consider his case for grant of temporary status and regularization. Hon'ble Central Administrative Tribunal disposed of the said OA vide order dated 1-8-2003 directing the Respondent to examine the Petitioner's case as to whether he was entitled for grant of temporary status/regularization as per relevant

rules/instructions/Scheme and to dispose of the same within a period of 2 months from the date of communication of the order. Petitioner filed representation which was disallowed. Thereafter in pursuance of the judgement of Hon'ble Supreme Court of India in WP No. 373/1986 which was decided on 27-10-1987, the Department formulated a scheme on 7-11-1989 vide Telecom Department letter No. 269-10/89-STN dated 7-11-1989 called Casual Labourers (Grant of Temporary status and Regularization) Scheme of Department of Telecommunications, 1989 which stated that the casual labour who were currently employed and who rendered continuous service of atleast one year and were engaged for 240 days in a year would be eligible for regularization.

3. A cut off date 30-3-1985 was fixed for temporary status which was later extended to 1-8-1998 vide DOT No. 269-4/93-STN-II(Pt) dt. 12-2-1999. When the Department did so, it took note of the situation that even though there was a complete ban of recruitment of casual labour the authority continued to engage casual labours due to exigencies of service.

4. The Department of Telecom vide its Order No. 269-13/99-STN-II dated 16-9-1999 as one time measure decided to convert part time casual labours with 4 or more hours of duty per a day who worked for more than 240 days in preceding 12 months into full time casual labour. Again the Department of Telecom issued Order No. 269-13-STN-II dated 25-8-2000 to convert part time casual labours with less than 4 hours duty per day who have worked for 240 days for preceding 12 months into full time casual labours. Again DOT vide letter No. 269-94/98-STN-II dated 29-9-2000 decided to regularize the services of all part time, full time casual labours and casual labours with temporary status (temporary status employees). In light of the above order, the Petitioner is eligible for grant of temporary status.

5. It has further been stated that w.e.f. 1-10-2000 Government of India established a company called Bharat Sanchar Nigam Ltd., and transferred all the staff, assets along with rights and liabilities of DOT in the newly constituted company and Petitioner is eligible for conversion into full time casual labour.

6. Before the date of retrenchment the Petitioner has completed more than 240 days and he was entitled for the benefit of Sec. 25H of the Industrial Disputes Act, 1947 which was not complied with by the Respondent management before disengaging the services of the Petitioner. Not only that, juniors to the Petitioner were reengaged as such, the Petitioner filed WP No. 23454/2005 which was disposed of by the Hon'ble High Court of A.P., Hyderabad with the following order:

"Accordingly, the writ petition is disposed of granting liberty to the petition to approach the labour

authorities under the Industrial Disputes Act, 1947 for the relief sought in the Writ Petition". Thus, this petition has been filed.

8. Respondent management filed counter and alleged that the facts mentioned in the claim petition is not correct. The claim of the Petitioner for grant of temporary status and regularization of the service is misconceived because Petitioner is neither a casual labour nor a part time casual labour at any point of time in the Department of Management.

9. The Petitioner worker himself has alleged that he worked for only two days only on 7-3-1988 to 8-3-1988 during the strike period. Later he worked as a contract labour. He filed OA No.772/2003 which was disposed of with a direction to dispose of his representation within two months. Representation of the Petitioner was rejected on 20-9-2003 because his claim was not found true and legal for his regularization and absorption. There is no proof that the Petitioner has worked in every month under muster rolls and work order month-wise. He has not filed any document in support of his claim, the burden is on Petitioner. There was a ban by Department of Telecommunication not to engage casual mazdoors vide letter dated 22-6-1998 as such, Petitioner could not have been engaged after that date. The petitioner's alleged service is neither legal nor valid nor supported with any document. There is no proof that Petitioner has worked for 240 days in 1988 to 1991 and in 2002.

10. Though Department of Telecommunication has formulated a scheme, the Petitioner does not come within the purview of the particular scheme nor he was entitled for regularization or absorption. Petitioner has not worked for 240 days in preceding 12 months. He could not provide any evidence that he has worked as part time casual labour as such, he cannot claim to be converted into a full time labour. The rules issued vide letter dated 16-9-1999 and 25-8-2000 are not applicable in the matter of the Petitioner. No junior to the Petitioner was engaged. The petition is misconceived and deserves to be dismissed.

11. Both the parties have filed their evidence. Petitioner filed his affidavit as examination in chief and presented himself for cross examination. He has marked 10 documents Ex. W1 to W10. Respondent management has filed affidavit of Sri B. Polaiah, A.G.M., HR and presented him for cross examination. He has marked Ex. M1 to M7 and has been cross examined at length. Both the parties have filed their written arguments. Petitioner has made oral submissions also.

12. I have heard both counsels and I have gone through claim statement, counter statement and evidence of the parties and their written arguments.

13. It has been argued orally as well as through written submission by counsel for the Petitioner that the

Petitioner has worked as contract labour in the years 1988 to 1991 and in 2002. When the Department of Telecommunications introduced the scheme of grant of temporary status and regularization, Petitioner's case was fit to be considered and he was fit to be converted into full time casual labour. The management has not considered this aspect of the matter, the management has again engaged the Petitioner in the year 2002 and Petitioner continued to work upto 2002 and his services were disengaged without giving any notice or retrenchment compensation as required under Sec. 25H of the Industrial Disputes Act, 1947 as such, the disengagement order dated 29-9-2000 is illegal, arbitrary and unfair labour practice and deserves to be quashed. He has relied on the case reported in 2003(3) Administrative Total Judgements page 209 in the matter between S. M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka.

14. Against this argument of the Learned Counsel for the Petitioner worker Learned Counsel for the Respondent management has argued that there is no iota of evidence on the record to substantiate the claim of the Petitioner that he worked in the years 1988 to May, 1991 continuously and in 2002 for more than 240 days in anyone of the years. From the assertion of the Petitioner he was engaged for only two days i.e., 7th and 8th March, 1988 when there was strike of the employees of the Telecom Department. After that, when the Petitioner was appointed, who appointed the Petitioner, how he was appointed has not been proved by the Petitioner. He has further argued that Telecom Department is a public utility service. In Public utility service Department there are rules of recruitment and it is the duty of the Petitioner to prove that he was appointed as per recruitment rules. If the Petitioner is able to prove that he was appointed as per recruitment rules then only he can claim that his services were terminated without following due process of law. If the Petitioner is unable to prove that he was legally and validly appointed in that case even if for the sake of argument it is accepted that Petitioner has worked in the Department of Telecommunications for few number of the days in any of the year alleged to have served by the Petitioner, his disengagement can not be said to be illegal because if the entry of the Petitioner in the Department itself is illegal he cannot challenge the legality of his disengagement as held by Hon'ble Supreme Court of India in the case law reported in 2006(4) SCC page 1 Secretary of State of Karnataka and others Vs. Umadevi which has been reiterated by the Hon'ble Supreme Court in its judgement in Civil Appeal No. 292/2009 arising out of SLP (C) No. 77803/2006 in the matter of Bharat Sanchar Nigam Ltd., Jammu Vs. Teja Singh wherein Hon'ble Supreme Court has stressed the need to follow the principles laid down in the case of Umadevi by all the courts of the country without any deviation. In the matter of Teja Singh the claim of the Petitioner was dismissed because he was not engaged through lawful means and by following the principles of recruitment process.

15. On the basis of the above argument this Tribunal has to consider the following points:

- (I) Whether the action of the management of Bharat Sanchar Nigam Ltd., in disengaging the services of Sri Sk. Jaleel Basha is legal and justified?
- (II) To what relief if any the Petitioner is entitled?

16. **Point No. (I) :** In the present case the claim of the Petitioner is that he was engaged in the Department of Telecommunications in the year 1988 and he worked in the 1988 to 1991 and in 2002. This fact has been challenged by the Respondent management. In the light of the challenge made by the Department of Telecommunications that Petitioner was not engaged by Department of Telecommunications, it is the duty of the Petitioner worker to prove that he was engaged in the Department of Telecommunications in the years alleged by him. To prove this fact the Petitioner has filed paper No. Ex. W2 alleged to be written by Superintendent, T.T., Telegraph Office to Sri Sk. Jaleel Basha, contract labour to report to Telegraph Master I/C D.T.O., Kadirī in accordance with phonetic instructions of Sr. Supdt. (TT), Kurnool. Apart from this letter there are other letter or bill or voucher to prove that said Sri Sk. Jaleel Basha has ever worked as casual labour or temporary labour as alleged by him. Though certain vouchers are filed but it is not in the name of worker. If he was a contract labour, for how much period he was engaged has not been clarified by the Petitioner and if he was engaged for the year 1998 how was he engaged in the year 1990 or he worked in the year 1991 is not clear. The only paper which the Petitioner has produced Ex. W2 goes to show that he was engaged as labour in the year 1991. In his own statement before this Tribunal he has stated that he worked in the years 1988 to 1991 continuously and in 2002 and has completed 240 days, he has not been able to clarify or state on oath that in which capacity he was engaged and he worked. In his cross-examination he has admitted that he worked as contract labour for delivering telegrams. He has further admitted that he did not join before cut off date. The management has filed copy of the letter imposing ban on engagement of casual labour after 22-6-1988. Petitioner has stated that no appointment letter was issued to him from Department of Telecommunications. Then how he was engaged is a matter of concern. It was the duty of the Petitioner to prove that he was appointed or engaged in the Department of Telecommunications under a valid appointment order or recruitment procedure. The statement of the Petitioner that he was not given any appointment order proves that he was engaged from the back doors without issuing any appointment letter and without following recruitment rules. Moreover, the documents produced by Petitioner and his own statement prove that he worked as contract labour for a certain number of days for delivering telegrams, which

will not confer the status of casual labour on the Petitioner. The documents and orders issued by the Department of Telecommunications which has been marked by Petitioner as Ex.W1 to W10 are not helpful to the Petitioner for conferring right of casual labour on him.

17. Petitioner claims that he worked in the year 2002 but there is no iota of evidence to prove that he has worked in the year 2002. The evidence shows that he filed OA No.772/2003 in which Hon'ble Central Administrative Tribunal has directed only to examine the case of the workman as to whether he is entitled for grant of temporary status and regularization as per the relevant rules/scheme and dispose the same within a period of 2 months from the date of the communication of the order and Department has chosen to reject the representation of the Petitioner, which was not covered under any of the government orders claimed by the Petitioner through Ex. W1 to W10. Before this Tribunal also Petitioner has not been able to produce any single evidence to prove that he was disengaged in the year 2002 or he was ever appointed through lawful procedure of the appointment rules as such, even if the Petitioner is disengaged without complying with the provisions of Sec. 25H or F of the Industrial Disputes Act, 1947, since Petitioner's initial appointment itself was not lawful, Petitioner can not claim that his disengagement was illegal or unjustifiable as held in the case of Secretary, State of Karnataka and Ors. Vs. Umadevi reported in 2006(4) SCC page 1 and the latest judgment of Hon'ble Supreme Court in the matter of Civil Appeal No. 292/2009 between Bharat Sanchar Nigam Ltd., Jammu Vs. Teja Singh. This Tribunal is of the considered opinion that the Petitioner's appointment was not as per rules, in that case even if he was disengaged in the year 2002 without observing the provisions of Sec. 25H and F of Industrial Disputes Act, 1947 it can not be said that the action of the management was illegal or unjustifiable. Point No. (I) is decided accordingly.

18. **Point No. (II):** The Petitioner was neither appointed nor he has worked as casual mazdoor or daily rated workman nor he was disengaged from the services on the alleged date. His disengagement is neither illegal nor unjustifiable as such, he is not entitled for any relief. The petition is misconceived and Petitioner is not entitled for any relief. The point No. (II) is decided in favour of the management.

16. From the above discussion, this tribunal is of the opinion that the Petitioner Sri Sk. Jaleel Basha was neither legally engaged nor he was illegally dismissed from the service and he is not entitled for any relief, as such, this petition is dismissed. Hence, this award.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 13th day of September, 2011.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for : Witnesses examined for
the Petitioner the Respondent

WW 1: Sri Sk. Jaleel Basha : MW1: Sri B. Polaiah

Documents marked for the Petitioner

- Ex.W1: Copy of certificate issued by 3rd Respondent office for the work period from 7-3-1988 to 8-3-1988, 18-4-1988
- Ex.W2: Copy of Lr.No.B-50/NL/91 dt. 25-5-1991
- Ex.W3: Copy of Petitioner's representation dt. 20-1-1992
- Ex.W4: Copy of Petitioner's representation to R3 dt. 24-10-1994
- Ex.W5: Copy of Lr. No.269-94/98-STN-II dt. 29-9-2000
- Ex.W6: Copy of orders in OA No.772/2003 dt. 1-8-2003
- Ex.W7: Copy of Petitioner's representation to R2 dt. 20-9-2003
- Ex.W8: Copy of DG Telecom, New Delhi Lr. No.269-10/89-STN dt.7-11-1989
- Ex.W9: Copy of DOT Cir. Lr No. 269-4/93-STN-II (Pt.) dt. 12-2-99
- Ex.W10: Copy of orders in WP No. 23454/2005 dt. 17-1-2007

Documents marked for the Respondent

- Ex.M1: Copy of scheme of management dt. 7-11-1989
- Ex.M2: Copy of Lr. of Respondent dt. 22-6-88
- Ex.M3: Copy of Lr. of Respondent dt. 21-10-1992
- Ex.M4: Copy of Lr. of Respondent dt. 12-2-99
- Ex.M5: Copy of Lr. of Respondent dt. 12-2-99
- Ex.M6: Copy of order in Civil Appeal No.292/2009 of Hon'ble Supreme Court dt.26-3-2010
- Ex.M7: Copy of order in SLP 385/2010 and 422/2010 dt.15-1-2010

नई दिल्ली, 20 अक्टूबर, 2011

का.आ. 3255.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एलसीआईडी-109/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-10-2011 को प्राप्त हुआ था।

[सं. एल-40025/3/2011-आईआर (डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th October, 2011

S.O. 3255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LCID-109/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of department of Telecom and their workmen, which was received by the Central Government on 20-10-2011.

[No. L-40025/3/2011-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD**

Present : - Shri Ved Prakash Gaur, Presiding Officer

Dated the 13th day of September, 2011

Industrial Dispute L.C. No. 109/2009

Between :

Sri D. Ramanaiah,
S/o D. Krishnaiah,
R/o Gopalareddy Palem Village,
Karijana Post, Sullurpet Mandal,
Nellore, Nellore District

...Petitioner

AND

1. The Chief General Manager,
Telecom(BSNL), Andhra Pradesh,
Door Sanchar Bhawan,
Hyderabad - 500 001.
2. The General Manager Telecom District(BSNL)
DTO Compound, Nellore

...Respondents

APPEARANCES :

For the Petitioner : M/s. A. Raghu Kumar,
Basavaiah & B. Pavan Kumar,
Advocates

For the Respondent : Smt. Ch. Lakshmi Kumari,
Advocate

AWARD

This petition under Sec.2 A(2) of the I.D. Act, 1947 has been filed by Sri D. Ramanaiah alleged Ex. Worker of Bharat Sanchar Nigam Ltd., challenging the order of his disengagement dated 29-9-2002 and to reinstate him to his post with all the service benefits.

2. It is alleged that he was engaged as casual mazdoor by the Telegraph Master Incharge, Telecom Center, Sullurpet w.e.f. 23-5-1996 @ Rs. 20 per day. Thereafter he worked in the said office for 173 days in the year 1996, 295 days in 1997, 294 days in 1998 and 175 days upto 31-7-1999. Subsequently he had also been engaged as casual mazdoor on consolidated wages of Rs. 20 per day. He submitted several representations for regularization of his services which has not been replied yet. Aggrieved with this inaction of management he filed OA 1187/1999 before the Hon'ble Central Administrative Tribunal, Hyderabad seeking regularization. Hon'ble Central Administrative Tribunal disposed off the said OA vide order directing the Respondent that if the Petitioner comes within the zone of consideration for appointment against Group D vacancy, his case may be considered. In case the Petitioner does not come within the zone of consideration, the Respondents shall inform the applicant suitably within four months from the date of receipt of a copy of this order. 2nd Respondent informed the Petitioner vide letter dated 12-7-2000 that his case would be considered at appropriate time since no vacancy was available at that time. Petitioner having come to know that vacancies are available at Sullurpet, Sriharikota and Naidupet in Nellore District, represented to Respondents to consider his case. As there was no positive reply from Respondents, he filed OA No.511/2002 before Hon'ble Central Administrative Tribunal for regularization of his services. Hon'ble Central Administrative Tribunal did not find any reason to pass any further orders on the said OA and directed the Respondents to consider the Petitioner's case in preference to freshers in case of any stopgap arrangement for engaging a casual labour. It is submitted that in pursuance of the judgement of the Hon'ble Supreme Court of India in W.P. No.373/1986 which was decided on 27-10-1987, the Department formulated a scheme on 7-11-1989 vide Telecom Department letter No.269-10/89-STN dated 7-11-1989 called "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Department of Telecommunications, 1989 which stated that the casual labour who were currently employed and who rendered continuous service of atleast one year and were engaged for 240 days in a year would be eligible for grant of temporary status.

4. A cut off date 30-3-1985 was fixed for temporary status which was later extended to 1-8-1998 vide DOT No.269-4/93-STN-II(Pt) dt.12-2-1999. When the Department did so, it took note of the situation that even though there was a complete ban of recruitment of casual labour the authority continued to engage casual labours due to exigencies of service.

5. The Department of Telecom vide its order No.269-13/99-STN-II dated 16-9-1999 as one time measure decided to convert part time casual labours with 4 or more hours of duty per a day who worked for more than 240 days in

preceding 12 months into full time casual labour. Again the Department of Telecom issued order No.269-13-STN-II dated 25-8-2000 to convert part time casual labours with less than 4 hours duty per day who have worked for 240 days for preceding 12 months into full time casual labours. Again DOT vide letter No.269-94/98-STN-II dated 29-9-2000 decided to regularize the services of all part time, full time casual labours and casual labours with temporary status (temporary status employees). In light of the above order, the Petitioner is eligible for grant of temporary status.

6. It has further been stated that w.e.f. 1-10-2000 Government of India established a company called Bharat Sanchar Nigam Ltd., and transferred all the staff, assets along with rights and liabilities of DOT in the newly constituted company and Petitioner is eligible for conversion into full time casual labour.

7. Before the date of retrenchment the Petitioner has completed more than 240 days and he was entitled for the benefit of Sec.25H of the Industrial Disputes Act, 1947 which was not complied with by the Respondent management before disengaging the services of the Petitioner. Not only that, juniors to the Petitioner were reengaged as such, the Petitioner filed WP No.23467/2005 which was disposed off by the Hon'ble High Court of A.P., Hyderabad with the following order:

"Accordingly, the writ petition is disposed of granting liberty to the petition to approach the labour authorities under the Industrial Disputes Act, 1947 for the relief sought in the Writ Petition". Thus, this petition has been filed.

8. Respondent management filed counter and alleged that the facts mentioned in the claim petition is not correct. The claim of the Petitioner for grant of temporary status and regularization of the service is misconceived because Petitioner is neither a casual labour nor a part time casual labour at any point of time in the Department of management.

9. The Petitioner worker has alleged that he worked for 295 days in 1997, 298 days in 1998 whereas there is no proof to show that he has worked under which muster roll and under which work order number, the details of such particulars are required to verify the service rendered by the workman. As seen from the writ petition No.23467/2005 and LC No.109/2009, there is no proof indicating the number of days worked in each month under muster roll number and work order number month wise. The burden is on the workman to prove that he worked in Respondents office with supporting evidence. He filed OA No.1187/1997 which was disposed off with a direction to consider the case for regularization on the basis of the circular. It was further directed that, if the Petitioner come within the zone of consideration for appointment against Group-D vacancy, his case may be considered. The Sub Divisional

Engineer intimated the workman vide letter dated 12-7-2000 that his case would be considered as and when the vacancies arise. Not satisfied with that workman filed OA No. 511/2002 for regularization of his services which was disposed of directing the Respondents to consider the case of the Petitioner in preference to fresher's if there is any need to engage a casual labour as a stop-gap arrangement. Representation of the workman has been disposed by the Respondents Nellore vide order dated 25-9-2004. There is no proof that the Petitioner has worked in every month under muster rolls and work order month-wise. He has not filed any document in support of his claim, the burden is on Petitioner. There was a ban by Department of Telecommunication not to engage casual mazdoors vide letter dated 22-6-1998 as such, Petitioner could not have been engaged after that date. The Petitioner's alleged service is neither legal nor valid nor supported with any document. There is no proof that Petitioner has worked for 240 days in the years 1990, 1991, 1998 and 1999.

10. Though Department of Telecommunication has formulated a scheme, the Petitioner does not come within the purview of the particular scheme nor he was entitled for regularization or absorption. Petitioner has not worked for 240 days in preceding 12 months. He could not provide any evidence that he has worked as part time casual labour as such, he cannot claim to be converted into a full time labour. The rules issued vide letter dated 16-9-1999 and 25-8-2000 are not applicable in the matter of the Petitioner. No junior to the Petitioner was engaged. The petition is misconceived and deserves to be dismissed.

11. Both the parties have filed their evidence. Petitioner filed his affidavit as examination in chief and presented himself for cross examination. He has marked 14 documents Ex.W1 to W14. Respondent management has filed affidavit of Sri B. Polaiiah, A.G.M., HR and presented him for cross examination. He has marked Ex. M1 to M7 and has been cross examined at length. Both the parties have filed their written arguments. Petitioner has made oral submissions also.

12. I have heard both counsels and I have gone through claim statement, counter statement and evidence of the parties and their written arguments.

13. It has been argued orally as well as through written submission by counsel for the Petitioner that the Petitioner was appointed as part time casual mazdoor by the Telegraph Master Incharge, Telecom Center, Sullurpet, w.e.f. 23-5-1996 @ Rs. 20 per day. That he performed duties as casual mazdoor for 173 days in the year 1996, 295 days in 1997, 294 days in 1998 and 175 days upto 31-7-1999. When the Department of Telecommunications introduced the scheme of grant of temporary status and regularization, Petitioner's case was fit to be considered and he was fit to be converted into full time casual labour. The management

has not considered this aspect of the matter and when he moved application for regularization his services were disengaged without giving any notice or retrenchment compensation as required under Sec. 25H of the Industrial Disputes Act, 1947 as such, the oral order of termination by the 2nd Respondent without regularizing the services of the Petitioner in terms of the letter No. 269-94/98- STN-II dated 29-9-2000 is illegal, arbitrary and unfair labour practice and deserves to be quashed. He has relied on the case reported in 2003(3) Administrative Total Judgements page 209 in the matter between S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka.

14. Against this argument of the Learned Counsel for the Petitioner worker Learned Counsel for the Respondent management has argued that there is no iota of evidence on the record to substantiate the claim of the Petitioner that he worked with the Respondent indicating the number of days worked in each month under muster roll number and work order number month-wise. Workman was not engaged before cut off date i.e., 30-3-1985 and the cut off date has been extended upto 1-8-1998. From the assertion of the Petitioner he was engaged for 295 days in 1997, 298 days in 1998, whereas there is no proof to show that he has worked under which muster roll and work order number, such particulars are required to verify the service rendered by the workman. After that, when the Petitioner was appointed, who appointed the Petitioner, how he was appointed has not been proved by the Petitioner. In Public utility service Department there are rules of recruitment and it is the duty of the Petitioner to prove that he was appointed as per recruitment rules. If the Petitioner is able to prove that he was appointed as per recruitment rules then only he can claim that his services were terminated without following due process of law. If the Petitioner is unable to prove that he was legally and validly appointed in that case even if for the sake of argument it is accepted that Petitioner has worked in the Department of Telecommunications for few number of the days in any of the year alleged to have served by the Petitioner, his disengagement cannot be said to be illegal because if the entry of the Petitioner in the Department itself is illegal he cannot challenge the legality of his disengagement as held by Hon'ble Supreme Court of India in the case law reported in 2006(4) SCC page 1 Secretary of State of Karnataka and others vs. Umadevi which has been reiterated by the Hon'ble Supreme Court in its written judgement in Civil Appeal No.292/2009 arising out of SLP (C) No. 77803/2006 in the matter of Bharat Sanchar Nigam Ltd., Jammu Vs. Teja Singh wherein Hon'ble Supreme Court has stressed the need to follow the principles laid down in the case of Umadevi by all the courts of the country without any deviation. In the matter of Teja Singh the claim of the Petitioner was dismissed because he was not engaged through lawful means and by following the principles of recruitment process.

15. On the basis of the above argument this Tribunal has to consider the following points :

- (I) Whether the action of the management of Bharat Sanchar Nigam Ltd., in disengaging the services of Sri D. Ramanaiah is legal and justified?
- (II) To what relief if any the Petitioner is entitled?

16. **Point No. (I) :** In the present case the claim of the Petitioner is that he was engaged in the Department of Telecommunications in the year 1996 and he worked in the years 1997, 1998 and 1999. This fact has been challenged by the Respondent management. In the light of the challenge made by the Department of Telecommunications that Petitioner was not engaged by Department of Telecommunications, it is the duty of the Petitioner worker to prove that he was engaged in the Department of Telecommunications in the years alleged by the Petitioner. To prove this fact the Petitioner has filed paper No. Ex. W3 dated 18-9-1998 alleged to be written by Divisional Engineer, Telecom to the Sub-Divisional Engineer Telecom, Sullurpet, sending biodata of casual labours working under his control and against the name of Sri D. Ramanaiah it is written that daily wages paid in ACG-17 working at Tel/Center/SL T. He has filed xerox copy of service certificate issued by Incharge, Telecom Centre, Sullurpet dated 16-8-1999 certifying that Sri D. Ramanaiah, casual mazdoor daily wages paid in ACG-17 since 23-5-1996 to 31-7-1999 which is Ex. W4. Petitioner filed Ex. W10 letter showing his number of working days sent to the SDE (Admn.), Nellore who issued this statement is not proved. It is xerox copy only in that case where is original and how worker got it is not clear. Apart from these letters there is no other letter or bill or voucher to prove that said Sri D. Ramanaiah has ever worked as casual labour or temporary labour as alleged by him. If he was a contract labour, for how much period he was engaged has not been clarified by the Petitioner. The papers which the Petitioner has produced Ex. W3, W4 and W10 does not prove that he was engaged as casual labour in the years 1996 to 1999. In his own statement before this Tribunal though he has stated that he worked in the years 1996, 1997, 1998 and 1999 and has completed 240 days, he has not been able to clarify or state on oath that in which capacity he was engaged and he worked. In his cross examination he has admitted that he worked as contract labour for delivering telegrams. He has further admitted that he did not join before cut off date. He has stated that he does not know whether Government of India has imposed ban on engagement of casual labour vide order dated 22-6-1988. The management has filed copy of the letter imposing ban on engagement of casual labour after 22-6-1988. Petitioner has stated that no appointment letter was issued to him from Department of Telecommunications. Then how he was engaged is a matter of concern. It was the duty of the Petitioner to prove that he was appointed or engaged in the Department of

Telecommunications under a valid appointment order following recruitment procedure. The statement of the Petitioner that he was not given any appointment order proves that he was engaged from the back doors without issuing any appointment letter and without following recruitment rules. Moreover, the documents produced by Petitioner and his own statement prove that he worked as contract labour for a certain number of days for delivering telegrams, this will not confer the status of casual labour on the Petitioner. The documents and orders issued by the Department of Telecommunications and his representations which have been marked by Petitioner as Ex. W1 to W 14 are not helpful to the Petitioner for conferring right of casual labour on him.

17. Petitioner claims that he worked in the year 1999 but there is no iota of evidence to prove that he has worked in the year 1999. The evidence shows that he filed OA No. 1187/1999 in which Hon'ble Central Administrative Tribunal has directed the Respondent that if the Petitioner comes within the zone of consideration for appointment against Group D vacancy, his case may be considered and in case the Petitioner does not come within the zone of consideration, the Respondents shall inform the applicant suitably within four months from the date of receipt of a copy of this order. On the representation of the Petitioner 2nd Respondent has addressed a letter informing the Petitioner that his case would be considered at appropriate time since no vacancy was available at that time which is marked as Ex. W7. Before this Tribunal also Petitioner has not been able to produce any single evidence to prove that he was disengaged in the year 1999 or he was ever appointed through lawful procedure of the appointment rules as such, even if the Petitioner is disengaged without complying the provisions of Sec. 25H or F of the Industrial Disputes Act, 1947, since Petitioner's initial appointment itself was not through lawful means, Petitioner cannot claim that his disengagement was illegal or unjustifiable as held in the case of Secretary, State of Karnataka and Ors. Vs. Umadevi reported in 2006(4) SCC page 1 and the latest judgment of Hon'ble Supreme Court in the matter of Civil Appeal No. 292/2009 between Bharat Sanchar Nigam Ltd., Jammu Vs. Teja Singh. This Tribunal is of the considered opinion that the Petitioner's appointment was not as per rules, in that case even if he was disengaged in the year 1999 without observing the provisions of Sec. 25H and F of Industrial Disputes Act, 1947 it cannot be said that the action of the management was illegal or unjustifiable. Point No. (I) is decided accordingly.

18. **Point No. (II) :** The Petitioner was neither appointed nor he has worked as casual mazdoor or daily rated workman nor he was disengaged from the services on the alleged date. His disengagement is neither illegal nor unjustifiable as such, he is not entitled for any relief. The petition is misconceived and Petitioner is not entitled for any relief. The point No. (II) is decided in favour of the management.

16. From the above discussion, this tribunal is of the opinion that the Petitioner Sri D. Ramanaiah was neither legally engaged nor he was illegally dismissed from the service and he is not entitled for any relief as such, petition is dismissed. Hence, this award.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 13th day of September, 2011.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for : Witnesses examined for
the Petitioner the Respondent

WW I: Sri K. D. Ramanaiah : MWI: Sri B. Polaiah

Documents marked for the Petitioner

- Ex.W1: Copy of DG Telecom, New Delhi Lr. No.269-10/89-STN dt. 7-11-1989
- Ex.W2: Copy of Lr. No.Casual Maz/98-99/SDE-SCJ dt. 18-9-1998
- Ex.W3: Copy of DOT Cir. Lr No.269-4/93-STN-II (Pt.) dt. 12-2-99
- Ex.W4: Copy of service certificate of Petitioner 16-8-1999
- Ex.W5: Copy of orders in OA No. 11878/1999
- Ex.W6: Copy of representation of WWI dt. 20-5-2000
- Ex.W7: Copy of Lr.No.ESTT/CAT/OA-1187/99/15 dt. 12-7-2000
- Ex.W8: Copy of Lr. No. 269-94/98-STN-II dt. 29-9-2000
- Ex.W9: Copy of representation of WWI dt. 2-4-2001
- Ex.W10: Copy of Lr. No. E1/SLE/20-01-02/1 dt. 5-11-2001
- Ex.W11: Copy of orders in OA No. 511/2002
- Ex.W12: Copy of representation of WWI dt. 23-11-2003
- Ex.W13: Copy of Lr.No. ESTT/CAT/OA-1187/1999 dt. 25-9-2004
- Ex.W14: Copy of orders in WP No. 23467/2005

Documents marked for the Respondent

- Ex.M1: Copy of scheme of management dt. 7-11-1989
- Ex.M2: Copy of Lr. of Respondent dt. 22-6-88
- Ex.M3: Copy of Lr. of Respondent dt. 21-10-1992
- Ex.M4: Copy of Lr. of Respondent dt. 12-2-99
- Ex.M5: Copy of Lr. of Respondent dt. 12-2-99
- Ex.M6: Copy of order in Civil Appeal No. 292/2009 of Hon'ble Supreme Court dt. 26-3-2010
- Ex.M7: Copy of order in SLP 385/2010 and 422/2010 dt. 15-1-2010

नई दिल्ली, 20 अक्टूबर, 2011

का.आ. 3256.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सर्वे ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एलसीआई डी-128/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-10-2011 को प्राप्त हुआ था।

[सं. एल-42025/9/2011-आईआर (डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th October, 2011

S.O. 3256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LCID-128/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Survey of India and their workmen, which was received by the Central Government on 20-10-2011.

[No.L-42025/9/2011-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AT HYDERABAD

Present : Shri Ved Prakash Gaur Presiding Officer

Dated the 8th day of September, 2011

Industrial Dispute L. C. No. 128/2003

Between :

Sri A. Madhavan Nair,
S/o Late Parameshwaran Nair,
R/o 19-2-68/A, Kalyanpur, Uppal,
Hyderabad - 500039 Petitioner

AND

1. The Surveyor General of India,
Union of India, Surveyor General Office,
Survey of India, Hetibarkala,
Dehradun, U.P. State
2. The Director, Union of India,
South, South Eastern Circle (PMPP),
Survey of India, Uppal,
Hyderabad
3. The Chairman,
PC Canteen,
Survey of India, Uppal,
Hyderabad - 500039 . Respondents

Appearances:

For the Petitioner : M/s. P. B. Vijay Kumar and
P. Venkata Rama Sarma,
Advocates

4000 90711-22

For the Respondent: Sri P. Phalguna Rao,
Advocate

AWARD

This petition under Sec.2 A (2) of the I.D. Act, 1947 has been filed by Sri A. Madhavan Nair an alleged employee of Surveyor General of India Office challenging the order of dismissal dated 23-1-98 and to reinstate him in the service with consequential service benefits.

2. It has been alleged by the Petitioner that he was appointed as casual labour (Cook) in the canteen maintained by Survey of India at Hyderabad on 4-9-1992. He worked in that capacity till 23-1-1998 till his services were disengaged.

3. It is alleged that he was entitled for the regularization but he was removed from service without any notice or without following the provisions of Sec.25F of the Industrial Disputes Act, 1947. It is alleged by the Petitioner that he had put in service for more than 240 days in a year and he is entitled for regularization. Since he was disengaged without following the principles of Sec.25F of the Industrial Disputes Act, 1947, the termination of the service is illegal and void ab initio. He made several representations but no relief was awarded to him, finally he filed O.A. before the Hon'ble Central Administrative Tribunal bearing No.527/1998. The said O.A. was dismissed on 6-5-1998 with the observation that the Petitioner was not able to establish that he was employed as casual labour as such, he was not covered by Hon'ble Central Administrative Tribunal Act.

4. Aggrieved with the said order, Petitioner filed petition No.22160 of 1998 before the Hon'ble High Court of A.P., Hyderabad. Said writ petition was withdrawn by the Petitioner to pursue his remedies through Industrial Disputes Act, 1947 on 29-1-2003. It is alleged that Survey of India is having Production Centre wherein thousands of maps are being produced as such, it is an industry. In order to have the lunch and other facilities to the staff, the Survey of India established a Canteen. Petitioner was engaged to work there. Besides, the handing over notes of the outgoing Managing Committee recorded the commendable service rendered by workman. He moved representation for regularization which remained pending, in the mean time he was dismissed from service. Dismissal order is bad in the eye of law, Respondent has not followed prescribed procedure and as such, he prayed to quash the dismissal order and to reinstate him into service with all consequential benefits.

5. Respondent management Surveyor General of India filed counter statement wherein he has alleged that the allegation made in the claim statement is false, baseless and incorrect. The Petition is not maintainable and the department of Surveyor General of India is not an industry within the meaning of either Factory Act or Industry Act. It is a Department functioning under the union of India as such, no relief can be granted to the Petitioner by this

Tribunal. The Petitioner himself has contended that he was working in the canteen and he has made correspondence with the canteen Department. He was not a casual labour of the Survey of India Department that is Central Government establishment. The temporary permit card issued to him was just to enable him to enter into the Survey of India compound wherein the canteen is situated. The Petitioner was not made any payment from the Government exchequer and he was not given grant of temporary status under Government of India, Department of Personnel & Training O.M. No.51016/2190-Estt.(C) dated 10-9-1993. Hence, he is not entitled for the benefit of the scheme.

6. It is further alleged that Petitioner was caught red handed while pilfering some provisions from the canteen on 19-1-1998. The matter was reported by the Manager to the Chairman, production centre. Canteen in writing on 20-1-1998 with the signatures of witnesses. The managing committee after conducting an emergency meeting took a decision to remove the Petitioner from the service. Accordingly, Petitioner was instructed not to attend to the work from 23-1-1998. Petition has no force and deserves to be dismissed.

7. Both the parties have lead their evidence in support of their contentions.

8. Petitioner workman has filed his affidavit in support of his claim statement and has marked 10 documents Ex.W 1 to W 10. The Respondent management has produced Sri Man Mohan Saran, Manager (Junior) as MW 1, Smt. S. Andalamma, Manager, Production Centre Canteen as MW 2 and Sri D. Mohan Reddy, Bearer, Production Centre Canteen as MW 3. Management has also marked 22 documents Ex.M 1 to M 22.

9. The matter was listed for the arguments but none of the parties appeared for making oral submissions. Since the case pertains to the year 2003, I myself has gone through the entire material available on the record and have considered the relevant questions which arisen in this case. This Tribunal has to consider the following points:—

- (I) Whether the action of management in not following the provisions of Sec.25F of the Industrial Disputes Act, 1947 is justified in the present case or not?
- (II) Whether the Petitioner is entitled for any relief from this Tribunal or not?

10. **Point No.(I):** The Petitioner has alleged that he is an employee of the Survey of India as he was working in the canteen which is controlled by the Surveyor General of India. In his affidavit in chief he has stated that he was appointed as casual labour w.e.f. 4-9-1992 in the canteen. However, he has accepted in his cross examination that he was appointed by the Management Committee of the canteen but no appointment letter was filed by him. It was

the duty of the Petitioner workman to prove that he was appointed as casual labour. No doubt, the Survey of India management in its counter statement has admitted that the Petitioner has worked in the canteen and he was asked not to come to the canteen for work on the ground of the decision of the Board of Management Committee meeting because the Petitioner has pilfered certain provisions of canteen. The Petitioner has filed Ex. W3 handing over note of outgoing committee's report of Production Centre Canteen wherein the names of the employees of the canteen and tiffin room is mentioned in column 'A' and 'B'. At Sl.No.2 it is mentioned that "in addition to the above 9 employees the following three casual labours are continuously being employed in the P C canteen to partly supplement the shortage of the strength. At Sl.No.1 "Sri A.M. Nair name finds place, from 4-9-1992 (Skilled @ Rs.64/- per day for full month including Saturdays, Sundays and Holidays)". This letter further discloses that it was recommended that their services be utilized by Md. Saleem, Senior Manager vide letter dated 15-7-1996. As such, though the Respondent management has contended that the canteen is not a part of the Survey of India Department the Petitioner's document Ex. W2 which is a form calling the applicant from Employment Exchange from the office of the Director, South Eastern Circle, Survey of India, Hyderabad dated 19-9-1996 circular No.C-4188/4.E.I.1 (Canteen/SSEC) shows that the post of Cook and Bearer and Assistant Manager was likely to be filled by office of the Director of South Eastern Circle, Survey of India. It proves that the canteen run in the premises of the Survey of India's office, is controlled by Survey of India. Thereby it prove that the workers or employees of the canteen are the employees of Survey of India and the contention of the Respondent that the Petitioner is not an employee of Survey of India is not correct.

11. The Petitioner has filed Ex.W1 to W3 to prove that he has worked in the Centre Canteen since 1992. By way of his affidavit and statement on oath he has stated that he has worked for continuous six years in the canteen. The claim of the Petitioner has not been denied. More over, there are documents produced by the management Ex.M9 to M18 which prove that the Petitioner has been working in the Respondent's canteen from the year 1992 upto 1998. Thus, even Petitioner was a daily wager or casual labour he could not have been removed from the service without following the proper procedure. In the present case, the Respondent has not stated that they have given any notice to the Petitioner or any enquiry was held in the matter of alleged stealing of the provision that is stealing of ½ Kg. Tuar Dal from the canteen store as stated by Smt. Andalamma-MW2 and Sri D. Mohan Reddy-MW3 in their respective affidavits. In that case proper enquiry was necessary for removing the Petitioner from the service but to the utter surprise of this Tribunal no enquiry was held only Board's meeting was held on

the alleged report of MW2 Smt. Andalamma as stated by the Respondent management and Petitioner was asked not to come to duty from 23-1-1998.

12. The Petitioner was a canteen worker. He worked in the canteen for six continuous years, there is a certificate of Department that Petitioner is a honest and sincere worker. In that event it was the duty of the management before dismissing the Petitioner from the service or disengaging the Petitioner from the service to hold an enquiry and afford proper opportunity to the Petitioner to present his case before the management. Not only that even if the Petitioner was a daily wage employee he worked in the canteen for continuous six years meaning thereby he has worked for more than 240 days in a year preceding the date of his termination. In that case canteen being an industry it was the duty and responsibility of the management to give one month's notice to the Petitioner or in lieu of the notice one month pay with retrenchment compensation as provided in Sec. 25F of the Industrial Disputes Act, 1947. But nothing sort of this provision has been complied with by the management as such, the action of management in discharging the Petitioner from the service is highly unjustifiable, illegal and unfair labour practice as defined in Industrial Disputes Act, 1947. The disengagement of the Petitioner from the service is arbitrary, illegal and unjustifiable and deserves to be quashed. Point No.1 is answered accordingly.

13. Point No. (II) : From the evidence produced before this Tribunal, this Tribunal has come to the conclusion that the Petitioner was casual labour initially working on daily wages and later on the monthly wages has been removed from the service without following the due process of the law and without complying with the provisions of Sec. 25 H & F of Industrial Disputes Act, 1947. He was not paid any retrenchment compensation before termination of his services, no enquiry was held in respect of the alleged charge of theft as such, the order of termination is illegal, arbitrary, violative of principles of natural justice and it amounts to unfair labour practice and therefore it deserves to be quashed and Petitioner workman is entitled to be re-engaged in the services but without back wages because, the Petitioner was a cook, he has not been able to prove that after his disengagement from service he was not been able to procure any alternative employment or work of cooking as such, he is not entitled for back wages. However, he will be reinstated and he will be paid his wages from the date of his reinstatement according to the rate prevailing on that date. Point No. (II) is decided accordingly.

14. From the above discussion, this Tribunal has come to the conclusion that the action of management of Survey of India in dismissing the Petitioner Sri A. Madhavan Nair is illegal and unjustified. Hence, the management is directed to reinstate the Petitioner into service as casual labour (cook) without back wages within

two months after publication of this award and he will be paid wages from the date of his reinstatement according to the rate prevalent on that date.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 8th day of September, 2011.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner Respondent

WW 1: Sri A. Madhavan Nair MW 1: Sri Man Mohan Saran

MW 2: Smt. S. Andalamma

MW 3: Sri D. Mohan Reddy

Documents marked for the Petitioner

- EX.W1: Copy of handing over note of outgoing managing committee dt. 31-3-1994
- EX.W2: Copy of the requisition form calling applicants from Employment Exchange dt. 19-9-1996
- EX.W3: Copy of handing over note of outgoing managing committee
- EX.W4: Copy of Petitioner's representation for regularization dt. 30-12-97
- EX.W5: Copy of identity card
- EX.W6: Copy of scheme for grant of temporary status and regularization of casual workers dt. 10-9-93
- EX.W7: Copy of forwarding letter to the Director, by Secretary canteen acknowledging the services rendered by me and Shyamkumar and P. Satyanarayana dt. 17-3-1994
- EX.W8: Copy of notice dt. 25-3-1998
- EX.W9: Original reply by the Respondent to Ex. W8
- EX.W10: Copy of order of the Hon'ble Division Bench of the Hon'ble High Court Permitting Petitioner to approach Appellate Authority

Documents marked for the Respondent

- EX.M1: Copy of report given by the Manager to the Chairman, Production Centre Canteen dt. 20-1-98
- EX.M2: Copy of extract of Minutes of emergency meeting of the Board of Managing Committee of the canteen
- EX.M3: Copy of legal notice dt. 25-3-98
- EX.M4: Copy of reply given by the Chairman of the centre canteen to EX. M3 dt. 25-3-98
- EX.M5: Copy of OA No. 528/98 on the file of Hon'ble Central Administrative Tribunal
- EX.M6: Copy of order dt. 6-5-98 passed in OA No. 527/1998

- EX.M7: Copy of order dt. 27-1-2003 passed in WP No. 22160 of 1998
- EX.M8: Copy of acquittance reg. payment of wages to WW1 for the m/o December, 1992
- EX.M9: Copy of acquittance reg. payment of wages to WW1 for the m/o January, 1993
- EX.M10: Copy of acquittance reg. payment of wages to WW1 for the m/o January, 1994
- EX.M11: Copy of acquittance reg. payment of wages to WW1 for the m/o January, 1995
- EX.M12: Copy of acquittance reg. payment of wages to WW1 for the m/o January, 1996
- EX.M13: Copy of acquittance reg. payment of wages to WW1 for the m/o January, 1997
- EX.M14: Copy of acquittance reg. payment of wages to WW1 for the m/o January, 1998
- EX.M15: Copy of cash statement for the month of January, 1995 of the PC Canteen
- EX.M16: Copy of the scheme dt. 1-9-1993
- EX.M17: Copy of letter dt. 19-11-1992
- EX.M18: Copy of the bill dt. 3-8-1993
- EX.M19: Copy of representation dt. 16-3-1994
- EX.M20: Copy of letter dt. 21-4-1996
- EX.M21: Copy of letter dt. 22-8-1994
- EX.M22: Copy of letter dt. 7-3-1995

नई दिल्ली, 20 अक्टूबर, 2011

का.अ. 3257.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गैरीसन् इंजीनियर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 8/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-10-2011 को प्राप्त हुआ था।

[सं. एल-13011/5/2010-आईआर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th October, 2011

S.O. 3257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Garrison Engineer and their workmen, which was received by the Central Government on 20-10-2011.

[No. L-13011/5/2010-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Present : N. K. PUROHIT, Presiding Officer

I. D. 8/2011

Reference No. L-13011/3/2008-IR (DU) dated: 26-4-2011

The Secretary

M. E. S. Employees Union

Hanuman Hatta, Gali No. 1,

Bikaner.

V/s

The Garrison Engineer (North)

M. E. S., Bikaner.

AWARD

19-9-2011

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 and 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication which is as under :—

“Whether the action of the Management of Garrison Engineer(N), M. E. S., Bikaner by not removing discrepancies from GPF Account of Shri Vijay Singh, Mazdoor is legal and justified? what relief the workman is entitled to?”

2. Pursuant to the receipt of the reference, the registered notices were issued to both the parties. On perusal of the acknowledgement receipt on record it appears that the registered notices sent to the parties have been served upon them but despite service of registered notices none appeared on behalf of both the parties on 8-8-2011, 29-8-2011, and 19-9-2011. Therefore, the case was reserved for passing award.

3. The applicant union has not appeared to file its claim statement despite service of registered notice. It appears that the applicant union is not willing to contest the case further. Under these circumstances, there is no material on record for adjudication of the reference under consideration on merits. Therefore “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

4. Award as above.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2011

का.आ. 3258.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डेजर्ट मेडिसिन रिसर्च सेंटर के प्रबंधन के संबंध में निम्नलिखित कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या

38/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-10-2011 को प्राप्त हुआ था।

[सं. एल-42012/48/2007-आईआर (डीयू)]

जोहान तोपनो, अवर सचिव

New Delhi, the 20th October, 2011

S.O. 3258.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Desert Medicine Research Centre and their workman, which was received by the Central Government on 20-10-2011.

[No. L-42012/48/2007-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Present : N. K. PUROHIT, Presiding Officer

Case No. 38/2008

Reference No. L-42012/48/2007-IR (DU) dated : 31-1-2008

Shri Raj Kumar

S/o Shri Pyare Lal,

Harijan Basti, Masuriya Shanti Nagar,

Jodhpur.

V/s

1. The Director General
Bhartiya Ayurvedic Anusandhan Parishad,
Ansari Nagar, New Delhi.

2. The Officer-in-charge
Desert Medicine Research Centre,
New Pali Road, Jodhpur.

Present:

For the workman : Sh. Gulab Raj Singhvi.

For the management : Sh. Mahendra Singh

AWARD

Date: 23-9-2011

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication which is as under :—

“Whether the workman Shri Raj Kumar has worked for 240 days or more with the management of the Desert Medicine Research Centre? If yes, whether the action of the management in terminating his services w.e.f. March, 2004 is legal and justified? If not, to what relief the workman is entitled to?”

2. The workman has pleaded in his statement of

claim that his mother was working as safai karamchhari under the employment of non-applicant. After death of his mother he had continuously worked as daily wager during period 2002 to 2004 and had performed the job of safai karamchhari. He has further pleaded that he had worked more than 240 days in a year but in spite of this, his services were terminated on 31-3-2004 in violation of the provisions of the Industrial Disputes Act. The workman has alleged that though he had worked continuously during the said period but the management deliberately did not pay for actual working days to show broken period in his service. He has also pleaded that his mother had died during service and he had worked against the vacant post of safai karamchhari which was lying vacant due to death of his mother. He has pleaded that his application for appointment on compassionate ground was also not considered by the management. The workman has prayed that management be directed to reinstate him with all consequential benefits.

3. Disputing the claim, the management in its written counter has averred that the workman was engaged as daily wager on need basis and his wages used to be paid from contingency fund; that he had been paid wages for all those days on which he had actually worked; that no appointment letter was ever issued to him; that the workman did not work for more than 240 days in a calendar year; that workman's mother Smt. Damu Devi was working as a safai karmachari who died on 20-9-2000 and after her death the work of safai karamchhari was temporarily performed by the workman; that the workman was informed about the order passed in respect of his application for appointment on compassionate ground; that non applicant is not an industry and the claimant is not a workman as defined U/s 2-J of the I.D.Act, therefore, the claim of the workman deserves to be rejected.

4. In rejoinder, the workman has only reiterated his earlier averments made by him in the claim statement.

5. In evidence, the workman has submitted his affidavit and affidavits of two other witnesses Sh. Deepak and Sh. Ishwar Khetani. In the rebuttal, the counter affidavits of Dr. S.P. Yadav and Dr. Karamvir Singh have been placed on record.

6. In documentary evidence, the workman has produced copies of certain payment receipts and job register for the period 2001 to 2004 whereas the management has produced statement of working days of the workman and copies of the payment vouchers in support of their respective cases.

7. Heard both the parties and perused the written arguments & relevant material on the record.

8. In view of the pleadings of both the sides the following questions crop up for consideration:—

- i. Whether the workman had worked continuously during period from year 2002 to

2004 as daily wager and had worked for more than 240 days during preceding 12 months from the date of his alleged termination i.e. 31.3.2004?

- ii. Whether the service of the workman were terminated in violation of section 25-F of the I.D. Act?

- iii. Relief.

Point No. I.

9. It is not in dispute that the mother of the workman Smt. Damu Devi was working as safai karamchhari under the employment of the non-applicant who died on 20-9-2000. It is also not in dispute that after the death of his mother the workman had worked as daily wager & had performed the job of a safai karamchhari. The case of the workman is that he had continuously worked during period 2002 to 2004 and had completed 240 days in a year whereas it has been contended on behalf of the management that the workman was engaged as daily wager for the job of safai karamchhari as and when required on need basis and he had never worked for 240 days in a calendar year.

10. The learned representative on behalf of the workman has contended that it has been admitted by the management that post of a safai karamchhari was existing in the DMRC and after the death of the workman's mother Smt. Damu Devi the post was lying vacant. He has further contended that from the evidence of the workman and witnesses Sh. Deepak and Sh. Ishwar Khetani and record produced by the workman it is established that the workman had continuously worked during period 2000 to 2004 and he has also completed 240 days in a calendar year. But his services were terminated without following the requirements under Section 25-F of the I.D. Act. In this regard the learned representative has placed his reliance on the job register and payment vouchers. He has also contended that workman was given assurance by the management that he would be regularized on the post of safai karamchhari therefore, in anticipation of the same he had worked continuously during period 2000 to 2004. But the management did not pay him for the actual days of work put in by the workman and broken period have been shown in the payment vouchers. It has been contended that the work of cleaning is required to be performed every day. Apart from this the management has failed to establish that the job of safai karamchhari was performed by any other person in the aforementioned period. Therefore, the statements of the management witnesses that the services of the workman were taken as and when required on need basis should not be relied upon. It has further been contended that the workman was entitled to be appointed as safai karmachari against vacant post created due to the death of his mother Smt. Damu Devi. The management witness Dr. Karamveer

Singh has not stated any reason for rejection of the application of the workman for appointment on compassionate ground. The learned representative has also contended that since the termination of the workman was in violation of the provisions u/s 25-F of the I.D. Act, the workman be reinstated with back wages.

11. Per contra, the learned representative on behalf of the management submitted that the claim of the workman has been denied by the management therefore, it was for the workman to lead evidence to establish that he had continuously worked for the period 2000 to March, 2004 or he had completed 240 days in preceding 12 months from the date of his alleged termination. But from the record and oral evidence it is not established that workman had worked uninterruptedly for the period of one year or he had completed 240 days in preceding 12 months from the date of his termination therefore, the compliance of Section 25-F of the I.D. Act was not required to be done.

12. To attract the provisions of Section 25-F of I.D. Act one of the conditions required is that the workman is employed in any industry for a continuous period which would not be less than one year.

13. The expression "continuous period" occur in Section 25-F has been defined in Section 25-B of the I.D. Act. Under sub-section (1) of the Section 25(B), if a workman has put in uninterrupted service of establishment including the service which may interrupted on account of sickness, authorize leave, accident, a strike which is not illegal, a lock out or secession of work that is not due to any fault on the part of the workman shall be said to be in continuous service for one year i.e. 12 months in respect of number of days he has actually worked with interrupted service permissible under sub-section (1) of Section 25(B).

14. Sub-section 2 of Section 25(B) of the I.D. Act says that even if a workman has not been in continuous service for a period of one year as envisaged under sub-section (1) of Section 25(B) of I.D. Act, he shall be deemed to have been in such continuous service for a period of one year if he has actually worked under the employer for 240 days in preceding period of twelve months from the date of his termination. The said sub-section provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year. In 1981 Lab IC 806 Hon'ble Apex Court has elaborated the mode to invoke the said fiction as follows:—

"In order to invoke the fiction enacted in sub section (2)(a), it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of a 'retrenchment'. After that date is ascertained, move backward to a period of 12 months just preceding the date of

retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman, pursuant to the deeming fiction enacted in sub-section 2(a), it will have to be assumed that the workman is in continuous service for a period of one year, and he will satisfy the eligibility qualification enacted in section 25F."

15. In the background of the legal provisions and principles set out above factual scenario in the present case is to be examined.

16. The workman in his affidavit has deposed that after death of his mother he was performing the job of safai karamchari as daily wager. He had worked continuously during period 2002 to 31-3-2004 but the payments were made for intermittent period.

17. In support of his case the workman has produced witnesses Sh. Deepak and Sh. Ishwar Khetani. The witness Sh. Deepak is a neighbourer of the workman and witness Sh. Ishwar Khetani is working as driver in DMRC. They have stated that workman had worked during period 2000 to March, 2004.

18. The witness Sh. Deepak has stated that occasionally he used to meet workman in his office. He has also stated that he was present at the time of oral termination of the services of the workman but in cross examination he has stated that the workman himself told him about his termination of service and his statement in affidavit in this regard is not correct.

19. Witness Sh. Ishwar Khetani has stated that services of the workman were discontinued in the month of March, 2009 and at the time of termination of his services he was present there.

20. In documentary evidence workman has produced photo copies of the job register said to be maintained by the DMRC and applications submitted by him for the payment of wages and payment receipts.

21. In rebuttal, the management witness Dr. S.P. Yadav, Scientist (E) has stated that no appointment letter was issued by the department. The services of the workman as daily wager were taken on the need basis and payments of the wages were made by the contingency fund. The workman had never worked for 240 days in any year. In cross examination he has stated that in the statement submitted by the department the working days have been shown on the basis of the work done by the workman. He has also stated that no attendance register was maintained. The Ex.W-I register which has been produced by the workman is not an attendance register. In the said register on the basis of the job performed by the workman reports were used to be made by the concerned employee and application submitted by the workman were used to be verified from the register.

22. The management witness Dr. Karamveer Singh has stated as per payment vouchers and applications submitted by the workman the payments were made to the workman for following working days :

July, 2001	9 days	application/receipt dated 21-8-2001 (Ex-1)
July and Aug., 2001	16 days	application/receipt dated 26-9-2001 (Ex-2)
Aug., 2001	7 days	application/receipt dated 17-9-2001 (Ex-3)
Dec., 2001	8 days	application/receipt dated 14-1-2002 (Ex-4)
Jan., 2002	12 days	application/receipt dated 14-3-2002 (Ex-5)
Feb., 2002	6 days	application/receipt dated 15-3-2002 (Ex-6)
March, 2003	19 days	application/receipt March, 2003 (Ex-7)
Jan. and Feb., 2004	21 days	application/receipt dated 1-3-2004 (Ex-8)
Feb. and March, 2004	9 days	application/receipt dated 24-3-2004 (Ex-9)
March, 2004	17 days	application/receipt dated 5-4-2004 (Ex-10)

23. The management witness Dr. Karamveer in his cross has stated that the workman had not worked for 240 days in any year. He has also stated that the workman was engaged in the year 2001 on daily wager and no appointment letter was issued. He has also admitted that register Ex-W-1 was maintained by the office and statement Ex-M-1 was prepared on the basis of Ex-W-1 register. He has further stated that the statement was prepared by the office and he did not verify the statement on the basis of register.

24. As per statement of working days (Ex-M-1) submitted by the management, the total working days of the workman are as under:—

Year 2001

July	9 days
August	7 days
December	8 days
	<u>24 days</u>

Year 2002

January	12 days
February	6 days
July	19 days
	<u>37 days</u>

Year 2003

March	12 days
	<u>12 days</u>

Year 2004

January	7 days
February	19 days
March	21 days
	<u>47 days</u>

25. On reckoning the aforesaid number of working days shown in the statement Ex-M-1 by the management total working days during years 2001 to 2004 come to 120 days only whereas according to the applications-cum-payment receipts produced by the management (Ex-1 to Ex-10) total working days come to 124 days and there is discrepancy in the total number of working days.

26. In claim statement the workman has pleaded that he had worked during period 2002 to March, 2004 but contrary to it he has deposed in his affidavit that he had worked continuously during period 2000 to March, 2004. It appears that initially year 2002 was mentioned in the claim statement but it was corrected as year 2002. He has not mentioned any specific date or month of engagement as daily wager in the year 2000. There is no documentary evidence in support of his contention that he was engaged in the year 2000 and had worked continuously in the said year.

27. The workman has admitted that no appointment letter was issued to him. He has also admitted that his attendance was used to be marked in the job register (Ex-W-1) by the staff of the block concerned and payment was used to be made to him on the basis of said register. The management witness Dr. Karamveer Singh has also admitted this fact that such register was maintained by the office and statement of the working days was prepared on the basis of said register. It is not the case of the workman that copy of the job register which has been produced by him is incomplete or any record pertaining to job register has been suppressed by the management.

28. The copies of the application-cum-receipt/ payment Ex-W-1 to Ex-W-10 which have been produced by the management, have also been produced by the workman. Apart from that the workman has also produced the application-cum-receipts dated 14-5-2002 showing 30 working days in the months of February to April (page 183), 2002, receipt dated 10-7-2002 for showing 15 working days in the months of May and June, 2002 (page 187), receipt dated 11-7-2002 showing 8 working days in the months of June and July, 2002 (page 191), receipt undated showing 22 working days in the months of December, 2003 and January, 2004, receipt dated 31-3-2003 showing 12 working days in the month of March, 2003.

29. Upon scanning the job register Ex-W-1 and payment vouchers produced by the workman it reveals that he had worked during intermittent period from years 2001 to 2004. On scrutinizing the number of working days figuring therefrom the total working days in the

respective years seem to be as under:—

Year 2001

July	9 days
August	7 days
<u>December</u>	<u>9 days</u>
	25 days

Year 2002

January	12 days
February	8 days
March	8 days
April	11 days
May	18 days
June	18 days
July	20 days
August	17 days
September	17 days
October	20 days
November	14 days
<u>December</u>	<u>16 days</u>
	179 days

Year 2003

January	2 days
March	11 days
April	15 days
<u>December</u>	<u>7 days</u>
	35 days

Year 2004

January	22 days
February	19 days
<u>March</u>	<u>17 days</u>
	58 days

30. As per documents placed on record by the workman it is evident that he had worked 25 days in year 2001, 179 days in year 2002, 35 days in year 2003 and 58 days in year 2004. The statement of the workman that he had continuously worked from the period 2000 to 31 March, 2004 does not find support from the record. There are inconsistencies and contradiction in the statements of the workman's witnesses Sh. Deepak and Sh. Ishwar Khetani and their statements do not find support from the record. Their evidence is very feeble and does not inspire to believe that the workman had continuously performed the job of safai karamchari during period 2000 to March, 2004.

31. From the working days shown in the job register Ex-W-1 and payment receipts on the record it is evident that the workman had not put in uninterrupted service for a continuous period of one year. It is not the case of the

workman that interrupted period is on account of interrupted service permissible under sub-section 1 of Section 25(B) or he was in continuous service of the non-applicant for one year within the meaning of said sub-section.

32. In reference order, no specific date of termination is mentioned only month and year is mentioned but the workman in his claim statement has alleged that his services were terminated on 31-3-2004. On reckoning the total working days during period March, 2003 to 31-3-2004 as per record produced by the workman they come to 91 days only therefore, even if the said date is taken to be as correct the workman has failed to establish that he had worked for at least 240 days during just preceding 12 months from the said date of termination. The payment receipts/vouchers and applications submitted by the workman for payments are not in dispute. It is evident from the applications submitted by the workman for payment of his wages that the workman did not work continuously and wages had been claimed for intermittent periods. Therefore, the contention of the workman that broken periods were deliberately shown by the management and actual working days were not shown is not sustainable.

33. In view of the above discussions the workman has failed to establish that he had worked uninterruptedly for one year during period 2000 to March, 2004 as per Section 25-B-1. The workman has also failed to establish that as envisaged under Section 25(B)(2) he had worked for at least 240 days during just preceding 12 months from the date of his alleged termination mentioned in the claim statement i.e. 31 March, 2004. Therefore, this point is decided against the workman.

Point No. II.

34. Admittedly, neither notice nor any compensation in lieu of notice was given to the workman but as per finding on point no. I the workman has failed to establish that he had rendered uninterrupted service for a year or he had worked for 240 days or more during preceding 12 months from the date of his termination. Therefore, provisions of Section 25-F of the I.D. Act are not attracted in the present matter.

Relief

35. Since, the findings on point no I & II are against the workman and he has failed to establish that his alleged termination was in violation of provisions of Section 25-F of the I.D. Act and was unjustified and illegal therefore, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

36. Award as above.

37. Let a copy of the award be sent to the Central Government u/s 17(1) of the I.D. Act for publication.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 24 अक्टूबर, 2011

का.आ. 3259.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम और रोजगार मंत्रालय की अधिसूचना संख्या का.आ.-दिनांक 27-4-2011 द्वारा भारतीय खाद्य निगम, जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 6 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 27-4-2011 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 27-10-2011 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. सं एस-11017/5/91-आईआर (पी. एल.)]

ए. सी. पाण्डे, संयुक्त सचिव

New Delhi, the 24th October, 2011

S.O. 3259.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour and Employment dated 27-4-2011 the service in the Food Corporation of India (FCI) which is covered by item 6 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 27th April, 2011.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months with effect from the 27th October, 2011.

[F. No. S-11017/5/91-IR (PL)]

A. C. PANDEY, Jt. Secy.